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11 IN THE UNITED STATES DISTRICT COURT  
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
13

14 UNITED STATES OF AMERICA,

15 Plaintiff,

17 v.

18 TIMOTHY CRAIG,

19 Defendant.  
20 \_\_\_\_\_

) No. CR 08-0329 JSW  
)  
) DEFENDANT'S MOTION TO  
) SUPPRESS EVIDENCE  
) SEIZED IN VIOLATION OF  
) THE FOURTH AMENDMENT  
)  
)  
) **Hearing Date:** Thursday,  
) September 25, 2008 at 2:30  
) p.m.  
21  
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**EVIDENTIARY HEARING  
REQUESTED**

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17 **EVIDENTIARY HEARING**  
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20 TO: UNITED STATES ATTORNEY, PLAINTIFF; AND KEVIN V. RYAN,  
21 UNITED STATES ATTORNEY, NORTHERN DISTRICT OF CALIFORNIA;  
AND DENISE BARTON, ASSISTANT UNITED STATES ATTORNEY

22 PLEASE TAKE NOTE that on September 24, 2008, defendant Tim Craig will  
23 move this Court to suppress the fruits of an unlawful search undertaken in violation of the  
24 Fourth Amendment. This motion is based on the constitution of the United States, all  
25 relevant case law and statutory authority, the following memorandum of points and  
26 authorities, and the argument of undersigned counsel at the motion hearing. The defense  
27 requests an evidentiary hearing on this motion, should it be necessary.  
28

## Summary of Argument

Mr. Timothy Craig stands before this Court charged in a two count indictment with receipt and possession of child pornography, in violation of 18 USC §§ 2252(a)(2) and 2252(a)(4)(B), respectively. *See Exh. A, Indictment*. In this motion Mr. Craig moves this Court to suppress all fruits of an unlawful search of an apartment in Napa, undertaken on August 8, 2007.

## Background

### I. Summary of Factual Background

This case involves a very complicated factual background with multiple state and federal jurisdictions, and layers of search warrants. To orientate the Court, the factual background below is prefaced here with a brief summary of the factual chronology of the case.

All of the evidence against Mr. Craig in this prosecution arises from a computer and digital media seized from his Napa residence on August 8, 2007.<sup>1</sup> The search of that residence was pursuant to a search warrant obtained by Napa Detective Joseph Jones, and signed by (visiting) Napa Superior Court Judge John N. Anton.

As will be described in more detail below, there will likely be a factual dispute as to what materials were attached to this search warrant application by Detective Jones. The detective claims that he attached an ICE Report of Investigation and an Ohio federal AOL

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<sup>1</sup> As of this filing, the defense still has not seen the material seized from the residence, has not been given photographs of that evidence, has not had non-*Adam Walsh* material disclosed or returned, and has not had an opportunity to undertake any forensic review of any digital media or computers seized. As the parties have explained to the Court, discovery negotiations are underway and the parties hope to avoid discovery litigation. Nonetheless, because the defense has not received the bulk of the discovery at the time of this filing, it reserves the right to file additional pretrial challenges upon review of that evidence (such as a challenge to the breadth and scope of the warrant and search).

1 search warrant application to his own affidavit and application. Evidence from the Napa  
2 County Clerk and a declaration from Judge Anton himself strongly undermine that claim.

3 To fully analyze the Napa search warrant it is therefore necessary to start at the  
4 beginning of the investigation, in Ohio.

## 5 **II. The Ohio Investigation of Lee Sly**

6 The case now before the Court illustrates the host of errors that arise when serious  
7 investigations are casually punted to and fro between federal, state, and county law  
8 enforcement agencies.<sup>2</sup> Mr. Craig's case began as an investigation by the Orland Park,  
9 Illinois Police Department, was handed off to an ICE agent in Ohio, got farmed out to  
10 local law enforcement in Napa who tacked (or rather, failed to tack) on federal paperwork  
11 to a local search warrant application with little independent analysis, was first prosecuted  
12 by the Napa County District Attorney and then – when a similar suppression motion was  
13 filed there – was “federalized” and ultimately ended up before this Court. Amidst this  
14 jurisdictional bouncing probable cause for the search of the Napa residence was lost.

15 While the tentacles of this investigation actually stretch back to 2004, Mr. Craig's  
16 case effectively begins with a 2007 federal investigation in Ohio.

### 17 **A. The 2007 Investigation of Ohioan Lee Sly**

18 Mr. Craig's case essentially began with an investigation in Ohio of a man named  
19 Lee Sly. *See Exh. B, Materials Allegedly Submitted by Det. Jones* at D00010.<sup>3</sup> Mr. Sly  
20

---

21  
22 <sup>2</sup> This is not meant to impugn AUSA Barton or the United States Attorney's Office  
23 of the Northern District of California. From the discovery available to date, there is no  
24 evidence that the United States Attorney's Office was involved in the *Craig* investigation  
25 until after state charges had been filed in Napa and the defense had filed this suppression  
26 motion (although federal agents apparently did participate in the Napa search).

27 <sup>3</sup> As will be discussed in greater depth *infra*, there is a factual dispute as to what  
28 materials were actually submitted in support of the search warrant application by  
Detective Joseph Jones. Detective Jones has previously represented that he submitted *all*

1 had been the target of a previous investigation regarding child pornography, and in 2007  
2 new information prompted law enforcement to obtain a search warrant from internet  
3 service provider America Online for the contents of Sly's e-mail account. *Id.*

4 Specifically, in early 2007 an Illinois man named Richard Darkey was discovered  
5 to have received an image of child pornography. *Id.* at D00012. That image was received  
6 from screen name "SIRIOUT3," identified as Lee Sly of Ohio. *Id.*

7 In March 2007, law enforcement agents served America Online with a federal  
8 search warrant for Mr. Sly's e-mail account. *Id.*; *see also Exh. B, Application and*  
9 *Affidavit for Search Warrant* 1:07 MJ 3005, N.D. Ohio, at D00023 (hereinafter, "AOL  
10 Warrant.") As noted in footnote one, *supra*, evidence from the Napa County Clerk and  
11 from the Honorable Judge Anton reveals that this AOL Warrant was *not* in fact attached  
12 to the search warrant application for Mr. Craig's residence in Napa. *See Exh. C, Frink*

13 \_\_\_\_\_  
14 of the materials included in Exhibit B. *See Exh. B* at D00001 (e-mail of Det. Jones to  
15 AUSA Danner, forwarded to AFDK Kalar). The materials allegedly submitted by  
16 Detective Jones have been Bates-stamped by the defense, with a "D" alpha.

17 The records of the Napa County Clerk flatly contradict the representations of  
18 Detective Jones. According to the Clerk's records, the ICE Report of Investigation (at  
19 *Exh. B*, D00010) through the AOL Summons Return (at *Exh. B*, D00076) were not  
20 included in the search warrant application presented by Detective Jones to the Honorable  
21 Judge N. Anton. *See Exh. C., Decl. Melissa Frink.*

22 Moreover, Judge Anton himself does not remember having been provided the  
23 federal materials at D00010 through D00076. He would have remembered this  
24 information because the size of the search warrant application would have been unusual  
25 for state practice and for Napa County, and because of the descriptions of child  
26 pornography movies within. *See Exh. D, Decl. Hon. John N. Anton.*

27 Mr. Craig objects to the government's reliance on materials from D00010 to  
28 D00067 in its defense of the search warrant, because that information was not submitted  
to the reviewing magistrate who authorized the search warrant. The defense discusses  
those materials in this motion only in this context of this explicit objection.

1 *Decl.; Exh. D., Hon. Anton Decl.* Despite this evidence, the government may nonetheless  
2 contend that the AOL warrant was attached to the Napa search warrant application.  
3 Because the AOL warrant may bear on the suppression motion now before the Court, it  
4 merits detailed discussion.

5 **B. The Ohio AOL Warrant for Lee Sly's Account**

6 On March 1, 2007, the Honorable Magistrate Judge Patricia Hermann of the  
7 Northern District of Ohio signed a search warrant application submitted by ICE Special  
8 Agent Gabriel Hagan. *See Exh. B, AOL Warrant* at D00023. Agent Hagan sought data  
9 from the AOL account of "SIROUT3" (Lee Sly), alleging probable cause that this data  
10 was evidence of the possession and distribution of child pornography. *Id.* at D00025 ¶ 1.

11 The detail and specificity of Agent Hagan's affidavit in support of the AOL search  
12 warrant application stands in stark contrast to the skeletal affidavit that would be later  
13 submitted by Detective Jones in the Napa search warrant application. The two  
14 applications deserve side-by-side comparison.

15 Special Agent Hagan had roughly fifteen years of experience in Customs and ICE  
16 when she submitted the AOL warrant application. *Id.* at ¶ 2. She has been involved on  
17 more than one hundred investigations involving the sexual abuse of children, and had  
18 been the affiant on over seventy-eight search warrants in this field. *Id.* Agent Hagan  
19 represented to the authorizing magistrate that she had "observed hundreds of thousands of  
20 examples of child pornography," and explained that she investigated the production,  
21 distribution, and receipt of child pornography "as defined in Title 18, United States Code,  
22 Section 2256," and the transportation of any "visual depiction if such visual depiction  
23 involves the use or a minor engaged in sexually explicit conduct." *Id.* at D00026 ¶ 2.

24 Agent Hagan's probable cause showing first focused on four 2004 e-mails sent  
25 from a child pornography defendant in Fresno to "Omy1233@aol.com" – Lee Sly. *Id.* at  
26 D00033. The agent described the attachments to each of those four e-mails in detail: each  
27 image involved a prepubescent female engaged in explicit sexual contact with adults. *Id.*  
28 at D00033-34. Agent Hagan described the sexual contact involved with specificity, as is

1 required to establish probable cause. *Id.* Lee Sly was not, however, prosecuted in 2004.

2 Two years later, a separate investigation of a man named Richard Darkey in  
3 Orland Park, Illinois, produced evidence sent by Mr. Darkey to an undercover agent in a  
4 chat room. *Id.* at D00037 ¶ 17. Mr. Darkey forwarded to the undercover agent a  
5 December 4, 2006 e-mail from “SIROUT3” (Lee Sly) with two images attached. *Id.* One  
6 of those images depicted a “pubescent female engaged in the lascivious exhibition of the  
7 public/genital area. The naked pubescent female is leaning to the side, propped up on her  
8 right elbow, with her right knee bent and out to the side, with her left leg straight,  
9 exposing her vagina.” *Id.*

10 Federal summons then revealed that Lee Sly was active on the SIROUT3 AOL  
11 account at the time of the AOL warrant application. *Id.* at D00038-39.

### 12 **C. Evidence Obtained from Lee Sly’s AOL Account**

13 The Ohio AOL search warrant was granted, AOL produced evidence from Mr.  
14 Sly’s account, and some unidentified person analyzed this data.<sup>4</sup> *See Exh. B, Report of*  
15 *Investigation #9* (“ROI #9”) at D00012. It is important to note that the details of the AOL  
16 search warrant return – and the analysis of the data from Mr. Sly’s account – was  
17 apparently memorialized in ICE Report of Investigation **Number 5** (ROI #5), under the  
18 same case number. *Id.* There is no evidence – even in Detective Jones’s version of the  
19 alleged supporting materials – that ROI #5 was attached to the Napa Search Warrant  
20 application. *See Exh. B.* ICE Report of Investigation #5 has not been produced in  
21 discovery.

22 After the AOL data from Sly’s account was analyzed, and presumably after ROI  
23 #5 was written, Special Agent Hagan prepared a new Report of Investigation – ROI #9.  
24 *See Exh. B., ROI #9* at D00012. That ROI stated its purpose as follows:

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25  
26 <sup>4</sup> As will be discussed, *infra*, the person who analyzed this AOL data from Mr.  
27 Sly’s account was not identified in *any* of the material allegedly presented to Judge Anton  
28 before the Napa search.



1 This report serves to identify the 125 other individuals engaged in trading child  
2 pornography and to refer investigative leads to various offices for action deemed  
3 appropriate. All investigative leads contain at least one image or movie file of  
4 child pornography received, forwarded and/or traded by each target in January and  
5 February 2007, located within SLY's e-mail account. Each investigative lead  
6 denotes the e-mail message(s) where at least one image or movie file of child  
7 pornography involving the target was involved; in some cases, more than one  
8 image or movie file was attached to the e-mail message.

9 The screen names associated with the 125 other e-mail accounts were submitted to  
10 the National Center for Missing and Exploited Children (NCMEC) for queries in  
11 their system; in some cases, previous Cyber Tip Line Reports relating to the screen  
12 name were identified, and in others, partial or more complete online user profiles  
13 were located. Any affirmative NCMEC response will be noted in each target's  
14 investigative lead.

15 All evidence (the search warrant on SLY's e-mail account and any NCMEC  
16 reports) will be forwarded to each office. To effect the transfer of evidence, please  
17 contact SSA Gabriel Hagan via e-mail (gabriel.hagan@dhs.gov) and reference  
18 your target's name along with the case agent's name, address and phone number.  
19 Please reference program code "1SN" (Operation Bulldog) when opening any  
20 cases.

21 *Id.*, ROI #9 at D00012.

22 In sum, ROI #9 – which Detective Jones claims was attached to his Napa warrant  
23 application, and which the defense vigorously contends was not – is a solicitation for  
24 investigations, sent to law enforcement agencies in the locales where these 125 suspects  
25 are located. Report #9 lists the identification information of the 125 e-mail accounts. *See*  
26 *id.* at D00013 - 22. As promised, Agent Hagan notes when the National Center for  
27 Missing and Exploited Children (NCMEC) has a report linked to the suspect's name. *See,*  
28 *e.g., id.* at D00013 (“[REDACTED] . . . NCMEC response.”)

The sum total of any reference or evidence relating to Mr. Craig in this report – or  
in any of the lengthy and extensive investigations arising from Ohio – is a terse  
paragraph:

“Limosdude”- Tim CRAIG, 3271 Beard Rd., Napa, CA 94558, (707) 257-1282.  
Message #223 in SLY's “sent” folder.

1 *Id.* at D00021.

2 There is no reference to any NCMEC response in relation to the “Limosdude”  
 3 address. *There is no description in this report – or in any material actually or allegedly*  
 4 *submitted in support of the Napa search warrant application – of the image associated*  
 5 *with “Message #223” sent to “Limosdude.”*

6 It has not been disclosed whether other law enforcement agencies accepted Agent  
 7 Hagan’s invitation for investigation. What is clear is that one officer did: Napa County  
 8 Detective Joseph Jones.

### 9 **III. The Napa Search Warrant Application**

#### 10 **A. The Detective Jones Application and Affidavit**

11 According to Napa Detective Joseph Jones he first received information relating to  
 12 this case in July 2007. *See Exh. B.* at D00006:6. In six short paragraphs Detective Jones  
 13 purported to lay out the probable cause for the search of the Napa residence on Beard  
 14 Road:

15 In July 2007 Your Affiant received information from the Department of Homeland  
 16 Security, Immigration Customs Enforcement Division. In November 2005 special  
 17 agents with the Cleveland office of the Department of Homeland Security received  
 18 information related to the possession and/or distribution of child pornography.  
 Agents were lead to believe that Lee Sly of North Royalton Ohio had received  
 child pornography via an e-mail.

19 In January 20007 [sic], agents received additional information from the Orland  
 20 Park, IL Police Department. Officers discovered Richard Darkey was involved in  
 21 trading child pornography via the Internet. Darkey received an image of child  
 22 pornography from the screen name “SIRIOUT3”, identified as Lee Sly.

23 On March 1, 2007 agents served America Online with a federal search warrant for  
 24 Sly’s email account information. A further examination of his account revealed  
 25 125 other individuals engaged in trading child pornography (Reference  
 26 Attachment). All the investigative leads contained at least one image or movie file  
 27 of child pornography received, forwarded, and/or traded by each target in January  
 28 and February of 2007. The America Online search warrant results indicated that  
 Timothy Craig was a suspect in this investigation. The records indicated the

1 following:<sup>5</sup>

2 “Limosdude”- Tim Craig, 3271 Beard Rd., Napa, CA, 94558, (707)257-1282,  
3 Message # 223 in Sly’s “sent” folder.

4 Based on this information Special Agent Charles H. Demore summonsed records  
5 from Pacific Gas & Electric for records of service as [sic] 3271 Beard Road, Napa  
6 California 94015. Those records indicate a customer name of “Tim Craig” with a  
7 telephone number of (707)257-1282.

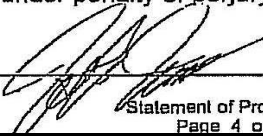
8 Your Affiant further conducted a records check and discovered Timothy Charles  
9 Craig (09.03.1958) residing at 3271 Beard Road, Napa, California is a PC290  
registered sex offender with the California Department of Justice.

10 *Id.* at D000006.

11 At the end of the form search warrant application, the phrase “Items attached and  
12 incorporated by Reference” is listed in bold, followed by two boxes. *See id.* at D0008. As  
13 the graphic following this paragraph shows, both boxes have lines within them; it appears  
14 that the “No” box has a handwritten X inside of it. *Id.*

15  
16  
17  
18 <sup>5</sup> This assertion by Detective Jones was a misstatement. The results from the AOL  
19 search warrant did *not* reveal that Tim Craig – residing on Beard Road, in Napa – was a  
20 recipient of “Message #223” from “Sly’s ‘sent’ folder.” That assertion posits that Sly sent  
21 Tim Craig an e-mail with child pornography and included Mr. Craig’s real name and  
22 contact information on it – or at least, that the real name and contact information could be  
divined from the contents of Sly’s AOL e-mail account. That is not the case.

23 *After* Mr. Sly’s AOL account was analyzed, ICE Special Agent Hagan issued a  
24 summons to AOL for the subscriber information associated with the e-mail addresses. *See*  
25 *Exh. B* at D00040 (summons dated March 30, 2007). That summons then apparently  
26 produced information from AOL that linked the screen name, “Limosdude” to Tim Craig  
27 on Beard Road. *See id.* at D00044 “Account information for limosdude.” As will be  
28 discussed in greater detail *infra*, this misstatement was *Franks* error and warrants  
suppression.

38	
39	Items attached and incorporated by Reference: YES <input checked="" type="checkbox"/> NO <input checked="" type="checkbox"/>
40	YOUR AFFIANT certify (declare) under penalty of perjury that the foregoing is true and correct.
41	
42	Executed at <u>Napa</u> , California 
SWSPC.doc - revised 02-15-2003 MLV	
Statement of Probable Cause	
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Case Report #	

**B. Detective Jones Fails to Attach the Federal Materials to the Search Warrant Application**

During early settlement discussions in the present federal case, AUSA Allison Danner e-mailed to undersigned counsel the entire packet that Detective Jones allegedly submitted to the Judge Anton. *See Exh. B* at D000001. Specifically, Ms. Danner forwarded an e-mail from Detective Jones, wherein he represented, “Here is exactly what I presented to Judge Anton.” *Id.*<sup>6</sup>

In the packet that Detective Jones maintains that he submitted, there are six major parts:

1. The Search Warrant (D000002);
2. Jones’s Statement of Probable Cause (D000005);
3. Agent Hagan’s Report of Investigation #9 (ROI #9) (D000010);
4. The AOL Warrant (D000023);
5. The later AOL Summons (D000040); and
6. The (apparent) return to the AOL summons for “Limosdude” (among other names) (D000044).

Parts 3, 4, 5 and 6 above are all from the federal investigations in Ohio. With all of those materials attached, the search warrant application packet would have been seventy-five pages long; a thick sheaf of materials. *See Exh. B*. Without parts three through six, the search warrant packet would only be eight pages long. *Id.* at D000002-09.

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<sup>6</sup> As noted previously, Detective Jones’s attachment to his e-mail has been Bates stamped by the defense and is found at Exhibit B.

1 Detective Jones did not, in fact, include the federal materials with the search  
2 warrant application that he submitted to Judge Anton on August 7, 2007.

3 Judge Anton has also reviewed the packet that Detective Jones claims to have  
4 submitted in support of the search warrant. *See Exh. D, Decl. of the Honorable John*  
5 *Anton*. Judge Anton is a retired Superior Court judge who has sat in over twenty  
6 California counties since his retirement. *Id.* at 1 ¶¶ 1, 3. On August 7, 2007, he was a  
7 visiting Superior Court judge in Napa County, California. *Id.* at 1 ¶ 4.

8 Judge Anton's responsibilities in Napa included the review of search warrant  
9 applications. *Id.* at 1 ¶ 5. The judge remembers the name, "Timothy Craig" and the  
10 general nature of the child pornography allegations in that case. *Id.* at 1 ¶ 6.

11 Judge Anton remembers Detective Jones's search warrant application and the  
12 detective's five-page statement of probable cause for the search of the Napa residence. *Id.*  
13 at 2 ¶ 7. Judge Anton signed the search warrant found in Exhibit A of his declaration after  
14 reviewing Jones's five-page probable cause statement. *Id.* at 2 ¶ 8.

15 The judge does not, however, remember the federal materials described as parts  
16 three through six above – everything beyond Detective Jones's declaration. *Id.* at 2 ¶ 10.  
17 Judge Anton does not remember that the search warrant that he signed for Beard Road  
18 contained as many pages as a packet that contained those materials would have had. *Id.* at  
19 2 ¶ 11. Moreover, Judge Anton believes that he would have remembered the federal  
20 materials, because of the descriptions of movie files in that document. *Id.* at 2 ¶ 12. He  
21 also believes that he would have remembered the federal materials, because they are very  
22 lengthy – which stands in contrast to the typical short search warrant applications in state  
23 practice. *Id.* at 2 ¶ 13.

24 Judge Anton's recollection is entirely accurate: Jones's brief affidavit *was* all that  
25 was submitted in support of the Napa search warrant application. On March 12, 2008, the  
26 clerk of the Superior Court of California, County of Napa, produced a certified copy of  
27 *all* documents in the court's files relating to the *Craig* case, generated from computer  
28 records. *See Exh. C, Frink Decl.; Exh. C, Attachment 1, Certified Records of Napa*

County Clerk. Precisely as Judge Anton remembered, the certified court file contains the affidavit of Detective Jones in support of the search warrant application – but the federal materials described in parts three through six above are conspicuously absent. *Id.* On July 1, 2008, the Napa court clerk again retrieved records relating to this search – this time, from a hard-copy folder. *Id.*, *Frink Decl. at ¶¶ 8-10*. Again, this set did not contain the federal materials described in parts three through six above. *Id.*; *see also Exh. C Attachment 2*.

**C. The Image Allegedly Attached to Message #223**

With or without the federal materials, the only allegation linking Timothy Craig to child pornography in the search warrant application is the following from Detective Jones’s probable cause affidavit. This brief summary falsely reports the results of the federal investigation:

All the investigative leads [from Sly’s computer] contained at least one image or movie file of child pornography received, forwarded, and/or traded by each target in January and February of 2007. The America Online search warrant results indicated that Timothy Craig was a suspect in this investigation. The records indicated the following:

“Limosdude”- Tim Craig, 3271 Beard Rd., Napa, CA, 94558, (707)257-1282, Message # 223 in Sly’s “sent” folder.

*Exh. B at D000006*.

What was, in fact, the image allegedly attached to “Message # 223?” First, it should be emphasized that Judge Anton never saw the image attached to this message.<sup>7</sup> It is not, in fact, clear that *Detective Jones* saw this image before submitting the search

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<sup>7</sup> In response to a defense discovery request, on March 27, 2008 at 9:50 a.m. AUSA Danner left a voice mail message for undersigned counsel that stated, “I’ve spoke with the agent from Napa and he did not show the Napa judge the picture from Sly’s e-mail account.”

1 warrant application.<sup>8</sup>

2 During a discovery review session on March 18, 2008, AUSA Allison Danner  
3 showed the picture allegedly attached to Message #223 to undersigned counsel (as of this  
4 filing neither a copy of the image itself nor the content of Message #223 have been  
5 provided to defense counsel in discovery.)

6 The defense hereby moves for disclosure of this image and the content Message  
7 #223, to be provided to the defense and to the Court for its review during this suppression  
8 motion and for inclusion in the record. Pending that disclosure, following is a description  
9 of the image based on undersigned counsel's review:

10 The image represented as having been attached to Message #223 is a digital  
11 photograph with a beige backdrop. There are two females in the photograph. They  
12 are probably older than five and probably younger than teenagers. They are on  
13 their hands and knees, with their buttocks pointed towards the camera. They are  
14 shoulder to shoulder. They are both wearing red thongs. They are not wearing  
15 other clothing. Neither their genitalia nor their breasts are visible. Both females are  
16 looking back at the camera over their shoulders. There is fabric of some kind in the  
bottom left hand corner of the photograph. Digitally embedded on the bottom right  
corner of the image, in white font on a black square, are the letters  
"www.vladimages.ru."

17 The image creation date for this image (for the file on the disk viewed by  
18 undersigned counsel) is June 6, 2007.

19  
20  
21 <sup>8</sup> Agent Hagan apparently wrote to the officers interested in initiating  
22 investigations with a tip sheet and a packet of information. *See Exh. E, Memo of Gabriel*  
23 *Hagan re CL07QR06PT009 - Lee Sly*. From this memo, it appears that Special Agent  
24 Hagan sent California law enforcement officers a CD-rom disk with the relevant images  
25 from Mr. Sly's e-mail account. *See id.* at ¶ 1. Whether Detective Jones reviewed the  
26 image on the CD associated with Message # 223 – or even had this CD before the search  
27 warrant application was filed – is not clear from the discovery thus far. The defense has  
28 not been given or shown Agent Hagan's disk as of this filing, and moves for its  
disclosure.



1 **IV. The August 8, 2007 Search of Mr. Craig's Residence**

2 On August 8, 2007, Detective Jones, other Napa County Sheriff personnel, and  
3 federal ICE agents executed a search of the apartment on Beard Road. *Exh. F, Incident*  
4 *Report* at TC00047. The officers seized a wide variety of information and material, from  
5 kitchen cabinets, from the bedroom, and the carport. *Id.* at TC00048. The core evidence  
6 for the prosecution now before this Court was obtained from a Toshiba laptop computer  
7 and from CD-rom disk(s). *Id.* These various electronic media allegedly contained child  
8 pornography. *Id.*

9 **V. Mr. Craig is Charged in Napa County Superior Court, and the Case is Then**  
10 **Brought to Federal Court Before this Suppression Motion Could Be Heard in**  
11 **State Court**

12 Four months after the search Mr. Craig was charged in Napa County Superior  
13 Court with "Possession of Control of Child Pornography with a Prior," a felony in  
14 violation of California Penal Code 311.11(b). *See Exh. G, Napa County Criminal*  
15 *Complaint.*

16 On January 18, 2008, Mr. Craig's defense counsel in Napa filed a lengthy Fourth  
17 Amendment motion to suppress. As in the present motion, Napa defense counsel asserted  
18 that the federal materials had not been attached to the search warrant application, and that  
19 the resulting thin affidavit of Detective Jones lacked probable cause. In response to this  
20 motion, the District Attorney filed a boilerplate, cut-and-paste response that occasionally  
21 borders on the nonsensical. *Exh. H, People's Points and Authorities in Opposition to*  
22 *Defendant's Motion to Suppress.* The District Attorney repeatedly asserts that the search  
23 warrant included the federal attachments – but does not claim that they were in the clerk's  
24 file. Notably the D.A. offered no declaration or affidavit from Detective Jones to back his  
25 claim that the federal materials were attached to the warrant application. *Id.*

26 Before the suppression motion could be heard (and granted) by the Napa Superior  
27 Court judge, the district attorney convinced the United States Attorney's Office to accept  
28 the case for prosecution. Mr. Craig (who was out of custody at the time) was arrested by



1 federal agents and made his initial appearance before the Honorable Maria-Elena James  
2 on a federal complaint on February 25, 2008.

### 3 Discussion

#### 4 **I. The Federal Materials Provided by ICE Were Not Attached to the Search** 5 **Warrant Application and Cannot, Therefore, Buttress the Probable Cause** 6 **Showing**

7 Before it can evaluate the legal question of the sufficiency of the probable cause  
8 showing in the Napa search warrant, this Court must first resolve a factual issue: were the  
9 federal materials provided by ICE Special Agent Hagan actually attached to Napa  
10 Detective Jones's search warrant application? The Napa County clerk and Judge Anton  
11 agree: they were not.

12 It is horn book law that the "validity of a search warrant depends upon the  
13 sufficiency of what is found *within the four corners of the underlying affidavit.*" *United*  
14 *States v. Taylor*, 716 F.2d 701, 705 (9th Cir. 1983) (emphasis added); *see also United*  
15 *States v. Gourde*, 440 F.3d 1065, 1067 (9th Cir. 2006), *en banc* ("[a]ll data necessary to  
16 show probable cause for the issuance of a search warrant must be contained within the  
17 four corners of a written affidavit given under oath.") (quoting *United States v. Anderson*,  
18 453 F.2d 174, 175 (9th Cir. 1971) (internal quotation and citation omitted)). The review  
19 of the probable cause showing in a search warrant application has long been strictly  
20 limited to the materials that were *actually before* the reviewing magistrate. "The  
21 magistrate must be provided with sufficient facts from which he may draw the inferences  
22 and form the conclusions necessary to a determination of probable cause. The facts upon  
23 which the magistrate bases his probable cause determination *must appear within the four*  
24 *corners of the warrant affidavit*; the warrant cannot be supported by outside information."  
25 *United States v. Rubio*, 727 F.2d 786, 795 (9th Cir. 1984) (emphasis added); *see also*  
26 *United States v. Castillo*, 866 F.2d 1071, 1077 (9th Cir. 1988) (explaining that the  
27 appellate review of the probable cause determination in the search warrant is limited to  
28 the information contained within the four corners of the underlying affidavit.)

1 In the present case, the four corners of Detective Jones's search warrant  
2 application did not include the federal ICE materials. Those federal materials cannot,  
3 therefore, be considered in this Court's probable cause review.

4 Of course, the first step in the "four corners" analysis is to determine where  
5 exactly the four corners of the search warrant lie. This Court must accordingly determine  
6 the actual content of the search warrant application that was before Judge Anton in  
7 August of 2007. *See United States v. Towne*, 997 F.2d 537, 544 (9th Cir. 1993) ("Only  
8 after the content of the 'search warrant' is established . . . can the warrant be tested to see  
9 if it meets [Fourth Amendment] requirements.") While extrinsic evidence may be  
10 considered to determine whether a supporting affidavit was part of the search warrant,  
11 "the *absence from the court records of an affidavit constitutes some evidence that one did*  
12 *not exist* and, depending on the circumstances, *may preclude a determination that the*  
13 *warrant was issued on probable cause.*" *Id.* at 543 (quoting *United States v. Lambert*,  
14 887 F.2d 1568, 1571-72 (11th Cir. 1989) (emphasis added). The absence of the federal  
15 materials from the Napa County court records is strong evidence that these materials did  
16 *not* in fact accompany Detective Jones's affidavit: "The records of that court [which  
17 authorized the warrant] should receive . . . great respect and proper deference." *Id.* at 540.

18 When the absence of the federal materials from the court file is corroborated and  
19 confirmed with Judge Anton's declaration this rises to essentially conclusive evidence  
20 that Detective Jones did not attach the federal information to his search warrant  
21 application. The federal materials were not simply not attached or presented to the  
22 magistrate, and their absence "preclude[s] a determination that the warrant was issued on  
23 probable cause." *Id.* at 543.

24 This outcome is supported by a parallel line of authority regarding missing  
25 affidavits in "overbroad" search warrants. In this authority, the government relies on  
26 warrant attachments to attempt to narrow the scope of a search. *See, e.g., United States v.*  
27 *Luk*, 859 F.2d 667, 676 (9th Cir. 1988) (explaining that it is a "well-settled principle that a  
28 warrant's overbreadth can be cured by an accompanying affidavit that more particularly

describes the items to be seized.”); *see also In re Property Belonging to Talk of the Town Bookstore, Inc.*, 644 F.2d 1317, 1319 (9th Cir. 1981) (“the warrant may properly be construed with reference to the affidavit . . . provided that a) the affidavit accompanies the warrant, and b) the warrant uses suitable words of reference which incorporate the affidavit therein.”); *United States v. Hillyard*, 677 F.2d 1336, 1340 (9th Cir. 1982) (“the search warrant may be construed with reference to the affidavit for purposes of satisfying the particularity requirement if (1) the affidavit accompanies the warrant, and (2) the warrant uses suitable words of reference which incorporate the affidavit therein.”); *United States v. Hayes*, 794 F.2d 1348, 1354 (9th Cir. 1986) (“an affidavit may be relied upon to provide the requisite particularity in an otherwise overbroad warrant only if (1) the affidavit accompanies the warrant, and (2) the warrant uses suitable words of reference which incorporate the affidavit therein.”)

Cases that discuss the “cure by affidavit” rule reveal that in order for an affidavit to “cure” a deficient search warrant, the affidavit in question *should be attached* to the warrant application when the application is reviewed by the issuing magistrate:

The purpose of the accompanying affidavit clarifying a warrant is both to limit the officer’s discretion and to inform the persons subject to the search what items the officers executing the warrant can seize. If the needed affidavits are not attached to the warrants, then neither purpose is served. Consequently, in this case the affidavits may not be considered in determining whether the warrant is facially [defective].

*Hayes*, 794 F.2d at 1355.

Applying this principle, the Ninth Circuit held that “an affidavit can cure the [facial deficiency] of a warrant if the affidavit is ‘attached to and incorporated by reference in’ the warrant.” *Center Art Galleries-Hawaii, Inc. v. United States*, 875 F.2d 747, 750 (9th Cir. 1989).

This “overbreadth” authority is an informative line of cases, and is an area of jurisprudence that strongly suggests that materials to be considered in conjunction with a search warrant should be attached to the application and incorporated by reference or – at

1 minimum – *must* have been *seen by the magistrate* and identified as “*that* set of papers  
2 and *that* series of words [that serve as] . . . proof that proper precautions were taken to  
3 prevent an unreasonably invasive search.” *Towne*, 997 F.2d at 548 (emphasis added).  
4 Note, moreover, that the primary concern with the overbreadth analysis is the role of  
5 attached documents in limiting the ultimate scope of the search. The rationale that  
6 requires materials to be attached or incorporated into a search warrant applies with even  
7 greater force to the threshold question of whether the authorizing magistrate has been  
8 presented with a sufficient showing of probable cause.

9 Judge Anton (the magistrate who issued the Napa warrant) could not have relied  
10 upon that which he never saw. From his declaration, and from all available records in the  
11 Napa Court Clerk’s office, it is apparent that Detective Jones failed to attach the federal  
12 materials to his search warrant application and affidavit. Because the federal ICE  
13 materials were not within the four corners of the search warrant application, those  
14 materials cannot be considered now in reviewing whether there was sufficient probable  
15 cause for a search warrant to issue.

16 **II. Detective Jones’s Search Warrant Application and Affidavit Provide**  
17 **Insufficient Probable Cause to Support the Napa Search**

18 “[N]o Warrants shall issue, but upon probable cause, supported by Oath or  
19 affirmation, and particularly describing the place to be searched, and the  
20 persons or things to be seized.’ U.S. Const. amend. IV. The Constitution is clear; a  
21 magistrate may authorize a search of a location only if officers establish probable cause to  
22 believe evidence of a crime may be found there.” *United States v. Hill*, 459 F.3d 966, 970  
23 (9th Cir. 2006).

24 In the present case, Detective Jones’s search warrant application did not establish  
25 sufficient probable cause to support the Napa search warrant.

**A. Because No Image Was Shown to the Magistrate, and Because There Was No Detailed Description of the Image in Jones’s Application, There Was Insufficient Probable Cause to Merit a Search Warrant**

The primary shortcoming of the Jones affidavit is both unsurmountable and fatal to the Napa search warrant: the detective failed to provide the sole offending image to the magistrate for his review, and failed to describe the image in detail to allow the neutral and detached magistrate the subjective determination of whether the image was, in fact, child pornography.

**1. Detective Jones’s Reference to the # 223 Image Fell Far Short of the “Terse” Description Held to Be Insufficient by the Ninth Circuit in *Battershell***

Because Detective Jones’s application and affidavit failed to provide the image allegedly attached to Message #223 to the magistrate, and because it failed to describe the image in any detail whatsoever, there was insufficient probable cause to support the search warrant issued for the Napa residence.

One of the leading Ninth Circuit decisions on this issue is a 2006 decision by Judge Tallman. *See United States v. Battershell*, 457 F.3d 1048 (9th Cir. 2006). In *Battershell*, the warrant application did not include images seen on a computer that was the target of the search. *Id.* at 1049. The investigation was sparked when the defendant’s girlfriend and her sister reported to law enforcement that they had seen pictures on the defendant’s computer of “kids having sex.” *Id.* at 1049. With the consent of these women, officers viewed pictures on the computer. The report of one of the officers described the images he saw: “the first picture showed “a young female (8-10 YOA) naked in a bathtub. The second picture showed another young female having sexual intercourse with an adult male. This confirmed that the pictures were illegal to obtain.” *Id.*

The officer’s report – with the descriptions of these two images – formed the basis of a search warrant application. *Id.* at 1050. The search of the computer revealed images involving the sexual abuse and exploitation of children and ultimately lead to a federal

1 indictment. *Id.*

2 The issue before the Ninth Circuit was akin to the issue presented in the instant  
3 motion: “we must determine that the warrant application made a sufficient showing that  
4 there was probable cause for the magistrate to believe that the pictures likely to be found  
5 on Battershell’s computer depicted: (1) sexually explicit conduct; and (2) a minor  
6 engaged in that conduct.” *Id.* at 1051.

7 Judge Tallman described five areas of “sexually explicit conduct” defined by the  
8 federal statute. *Id.* (discussing 18 USC § 2256(A)(2)). As in the present case, the first four  
9 categories do not apply. *See id.* It was the fifth category – the “lascivious exhibition of the  
10 genitals or pubic area of any person” – that was at issue in the photos described in  
11 *Battershell* (and is the category that is at issue in the present case). *Id.* (discussing 18 USC  
12 § 2256(2)(A)(v)).

13 Judge Tallman observed that this “lascivious” category of “sexually explicit  
14 conduct” is particularly challenging to define. As the Court explained, the identification  
15 of lascivious images almost always involves a subjective and conclusory determination on  
16 the part of the viewer. *Id.* (quoting *United States v. Brunette*, 256 F.3d 14, 18 (1st Cir.  
17 2001)).

18 The Ninth Circuit’s treatment of the first, “bathtub” image in *Battershell* fatally  
19 undermines the search warrant at issue in the *Craig* case:

20 Officer Lobdell described the first photograph as “a young female (8-10 YOA)  
21 naked in a bathtub.” The government correctly concedes that the description of the  
22 first photograph *is insufficient to establish probable cause* because the first  
23 photograph falls within the fifth category of child pornography: “lascivious  
24 exhibition of the genitals or pubic area.” Officer Lobdell’s terse description, absent  
25 an accompanying photograph, is insufficient to establish probable cause that the  
26 photograph lasciviously exhibited the genitals or pubic area because *his conclusory*  
27 *statement is an inherently subjective analysis and it is unclear if the photograph*  
28 *exhibited the young female’s genitals or pubic area.*

1 *Id.*<sup>9</sup> (emphases added).

2 Turning back to the Napa warrant, Detective Jones’s “description” of the image  
 3 allegedly attached to Message # 223 falls far short of the detail given in the description of  
 4 the first image in *Battershell*; an image that did *not* establish probable cause. The  
 5 *Battershell* description provided the gender of the subject of the image; Jones’s flat  
 6 assertion that the Message #223 image was “child pornography” did not. The *Battershell*  
 7 description gave the approximate age of the subject of the image; Jones’s cribbed blurb  
 8 from the Report of Investigation #9 did not. The *Battershell* description explained the  
 9 setting of the image (a girl in a bathtub); the Jones reference to the # 223 image was  
 10 completely devoid of detail. Finally, the *Battershell* description explained that the young  
 11 girl was naked; Detective Jones, by contrast, provides no details as to the subjects’s state  
 12 of dress – indeed, no details or description of the image at all. Detective Jones’s  
 13 description of the image allegedly attached to Message # 223 is so cursory that it cannot  
 14 fairly be described as a description: it is certainly far, far less than the “terse” description  
 15 of the bathtub image in *Battershell*. Because the description of the bathtub image in  
 16 *Battershell* did not establish probable cause, Detective Jones’s reference to the attachment  
 17 to Message #223 certainly failed to do so as well. *Battershell*, 457 F.3d at 1051; *see also*  
 18 *United States v. Weber*, 923 F.2d 1338, 1344 (9th Cir. 1991) (holding that one delivery of  
 19 materials that were “apparently child pornography” two years before the search warrant  
 20 was a “bare bones” showing that did not provide a substantial basis to find probable cause  
 21 for a search warrant).

22 **2. There is No Meaningful Difference in the Probable Cause Analysis**  
 23 **Between the California Child Pornography Statute and the Federal**  
 24 **Statute**

25 In *Battershell*, the Court essentially combined the analysis of probable cause to

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27 <sup>9</sup> The description of the second image – of a young female having sex with an  
 28 adult male – was sufficient to satisfy the probable cause showing. *Id.* at 1053-54.



1 believe a *federal* child sex crime had been committed, with the analysis of probable cause  
2 as to whether there had been a violation of a *Washington* state statute. 457 F.3d at 1051 &  
3 n.2 (explaining that there was no meaningful difference in the probable cause analysis  
4 between the Washington statute and the federal child pornography statutes). The same is  
5 true in the present case, which involves California statutes.

6 California Penal Code Section 311.11 makes it a felony to possess an image “the  
7 production of which involves the use of a person under the age of 18 years, knowing that  
8 the matter depicts a person under the age of 18 years personally engaging in or simulating  
9 sexual conduct, as defined in subsection (d) of Section 311.4.” Cal. Penal Code § 311.11.

10 Subsection (d) of Section 311.4, in turn, defines various type of sexual conduct  
11 (most of which is not at issue in the image allegedly attached to Message #223):

12 “Sexual conduct” means any of the following, whether actual or simulated: sexual  
13 intercourse, oral copulation, anal intercourse, anal oral copulation, masturbation,  
14 bestiality, sexual sadism, sexual masochism, penetration of the vagina or rectum  
15 by any object in a lewd or lascivious manner, exhibition of the genitals or pubic or  
16 rectal area for the purpose of sexual stimulation of the viewer, any lewd or  
17 lascivious sexual act as defined in Section 288, or excretory functions performed  
18 in a lewd or lascivious manner, whether or not any of the above conduct is  
performed alone or between members of the same or opposite sex or between  
humans and animals. An act is simulated when it gives the appearance of being  
sexual conduct.

19 Cal. Penal Code § 311.4(d)(1).

20 “Child pornography” is defined by federal statute in Section 2256(8) of Title 18:

21 18 U.S.C. § 2256(8) defines “child pornography” as any visual depiction,  
22 including any photograph, film, video, picture, or computer or computer-generated  
23 image or picture, whether made or produced by electronic, mechanical, or other  
means, of sexually explicit conduct, where-

24 (A) the production of such visual depiction involves the use of a minor  
25 engaging in sexually explicit conduct;

26 (B) such visual depiction is a digital image, computer image, or  
27 computer-generated image that is, or is indistinguishable from, that of a  
28 minor engaging in sexually explicit conduct; or



(C) such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct.

Section 2256(2)(B)(iii) defines “sexually explicit conduct” as “graphic or simulated lascivious exhibition of the genitals or pubic area of any person.” Thus, the lascivious exhibition of the genitals or pubic area of a minor constitutes child pornography.

*Hill*, 459 F.3d at 969 & n.2.

The state and federal statutes thus overlap in the only area of significance in the present motion to suppress: in essence, they both include a “lascivious” category that prohibits the exhibition of the genitals or pubic area of a minor for the purpose of sexual stimulation of the viewer.

As in *Battershell*, there is no meaningful difference in the probable cause analysis between the federal child pornography statutes and California statutes. *Battershell*, 457 F.3d at 1051 & n.2. As in *Battershell*, under either statutory definition there was insufficient probable cause to support the search warrant.

**3. There is No Basis to Support the Probable Cause Showing in the Search Warrant Application Because No Person is Identified as Having Reviewed the Image Attached to Message #223**

There was insufficient probable cause in the Napa search warrant, because nowhere in Detective Jones’s affidavit (or in the federal materials, for that matter) does it identify the person who reviewed the image allegedly attached to Message #223.

In his affidavit, Detective Jones does not reveal who made the “subjective and conclusory determination” that the Message # 223 image was “child pornography.” *Battershell*, 457 F.3d at 1051. Indeed, from Jones’s affidavit it remains a mystery *who* made this determination:

On March 1, 2007 agents served America Online with a federal search warrant for Sly’s email account information. *A further examination of his account* revealed 125 other individuals engaged in trading child pornography (Reference Attachment). All the investigative leads contained at least one image or movie file of child pornography received, forwarded, and/or traded by each target in January and February of 2007.

1 *Exh. B, Jones Statement of Probable Cause at 2:16-21, D00006* (emphasis added).

2 Detective Jones does not reveal who conducted the “further examination of this  
3 account.” *Id.* He does not identify who determined that the images in the Sly account  
4 were evidence of “trading in child pornography.” *Id.* He does not tell Judge Anton the  
5 identity of the person who determined that at least one image or movie file of child  
6 pornography was sent to the “Limosdude” screen name. *Id.*

7 This omission is important, because the government will undoubtedly tout the  
8 (questionable) expertise of Detective Jones or the (more-extensive) expertise of Special  
9 Agent Hagan in the identification of child pornography to shore up this facially deficient  
10 warrant. This “expertise” is a red herring, for as *Battershell* teaches it is the responsibility  
11 of the *magistrate* – and not the agent – to identify prohibited child pornography.  
12 Moreover, there is no factual basis in the affidavit (or, for that matter, in the federal  
13 materials found in Exhibit B) that either Detective Jones or Agent Hagan reviewed the  
14 image and made the legal determination that it was “child pornography.” Therefore,  
15 whether those two law enforcement officials are “experts” in the field is doubly  
16 irrelevant, for Judge Hagan was never told that either Jones or Hagan had even seen the  
17 image – much less that they made the subjective determination that the image was child  
18 pornography.

19 **B. One E-mail to Which is Attached One Image of Alleged Child**  
20 **Pornography is Insufficient to Establish Probable Cause**

21 The Jones affidavit did not contain “sufficient facts to support the magistrate  
22 judge’s finding that there was a ‘fair probability’ that [Craig’s] computer contained  
23 evidence that he violated [child pornography laws].” *Gourde*, 440 F.3d at 1069. As  
24 discussed above, Detective Jones (or another, unidentified agent, paralegal, or computer  
25 analyst) cannot usurp the role of a neutral and detached magistrate by making the  
26 subjective, conclusory determination that the image attached to Message #223 was “child  
27 pornography.” *Battershell*, 457 F.3d at 1051.

28 Even if Detective Jones had provided a detailed description of an image of child

1 pornography, however, a single e-mail with a single image does not create a “fair  
2 probability” that the Napa residence contained child pornography.

3 The lead decision on probable cause arising from e-mailed child pornography is  
4 *United States v. Kelley*, 482 F.3d 1047 (9th Cir. 2007), *cert. denied sub nom. Kelley v.*  
5 *United States*, 128 S. Ct. 877 (2008). In *Kelley*, the defendant challenged the probable  
6 cause showing in an affidavit before the Honorable Phyllis J. Hamilton in the Northern  
7 District of California. *Id.* at 1048. Because of an “unusual situation” of a district court’s  
8 redaction of the affidavit, *id.* at 1051, the legal issue for the Ninth was narrow – and  
9 similar to that now before this Court. In essence, the question for the Court in *Kelley* was  
10 whether the “totality of circumstances . . . allows the reasonable inference that [the  
11 defendant] wanted to receive the offending e-mails,” when the probable cause showing  
12 was information discovered during “two unrelated computer searches for child  
13 pornography, demonstrating that Kelly had received nine e-mails with attachments  
14 depicting young boys in sexually explicit positions.” *Id.* at 1048.

15 The government’s defense of the probable cause showing in *Kelley* stands in  
16 marked contrast to the non-existent showing in Detective Jones’s warrant affidavit:

17 The government maintains that the totality of the circumstances allows the  
18 reasonable inference that Kelley wanted the offending e-mails, even though there  
19 was no direct evidence that he solicited them, because he was sent multiple e-mails  
20 with sexually explicit images of children, he was linked to two individuals known  
21 to possess or receive child pornography, the child pornography was of the same  
22 type and this shows Kelley’s interest, the type of child pornography Kelley was  
23 sent is not the kind of material likely to be received by unwitting recipients, and he  
24 received the contraband on different occasions at two different screen names.

25 *Id.* at 1051. The defendant Kelley countered that the affidavit was deficient for a number  
26 of reasons:

- 27 ● There was no evidence about who sent the small number of e-mails or when  
28 some of them were sent;
- There was no evidence that he solicited, desired, opened, or even received them  
as the e-mails could have been bounced back by a spam blocker;

- There was no evidence that connects him to the offender typology;
- There was no evidence that corroborates any interest or intent on his part to obtain or possess child pornography.

*Id.* In this motion, Mr. Craig adopts and advances each of these arguments as to the deficient probable cause showing in the Jones affidavit.

The government prevailed in *Kelley*. The Ninth Circuit first turned to the (then-recent) decision in *Gourde* for the analysis to be used in computer search warrants: “This means, as *Gourde* illustrates, that it can be ‘fairly probable’ that images of child pornography would be found on Kelley’s computer without concrete evidence that Kelley actually solicited the e-mails if it appears likely that he did from the facts averred in the affidavit and reasonable inferences drawn from them.” *Id.* at 1052.

The Court in *Kelley* used the cross-buttressing effect of e-mails from two different known sources of child pornography – and the fact that there were multiple e-mails containing clear child pornography – to support the inference that Kelley knowingly received these e-mails:

Thus, the salient facts are that Kelley, using two different screen names, received nine different emails with numerous attachments containing the same type of illicit child pornography (depicting sexually graphic conduct by young boys) that two other, unrelated individuals also had on their computers. There is no question that at least one of these individuals, Mumenthaler, also distributes child pornography, and that Hutchings collects it. As the affidavit explains, those who collect child pornography often collect addresses of persons with similar interests as a means of referral, exchange, and profit. The reasonable inference from receipt of e-mails in care of different screen names that pertain to a discrete type of pornography – young boys in sexually explicit poses – and that also ended up on the computers of two unrelated people who were also receiving or distributing the same type of material, is that Kelley was part of network of persons interested in child pornography primarily involving young boys.

*Id.* at 1053.

*None* of these cross-buttressing facts are present in the case now before the Court. In *Kelley*, there were multiple e-mails. Here, there was one. In *Kelley*, there dozens of

1 image and video attachments. *Id.* at 1052-53. Here, there was one. In *Kelley*, the affiant  
2 described the images in detail and those descriptions clearly were of child pornography.  
3 *Id.* at 1053. Here, there was no description of the image. In *Kelley*, all of the images  
4 involved young boys involved in sexually explicit conduct – reinforcing the inference that  
5 Kelley had a specific interest in this type of image, and that this was not “spam.” *Id.* at  
6 1053. Here, the magistrate (and quite likely, Detective Jones) never actually saw the  
7 Message # 223 image – and there were obviously no other images of like nature to  
8 buttress an inference against Mr. Craig. In *Kelley*, the affidavit contained expert opinion  
9 about child pornography collectors and networks of distribution. *Id.* at 1053. Here, there  
10 was no expert opinion offered on these subjects, at all. In *Kelley*, the defendant received  
11 child pornography from two different and unrelated known child pornography sources. *Id.*  
12 at 1053. In the present case, “Limosdude” was sent Message #223 from a *single* source –  
13 and was sent only one identified message, with one image labeled, “child porn.” In  
14 *Kelley*, the defendant was sent child porn to *several* of his screen names. *Id.* In the present  
15 case, one image was sent to one screen name. In *Kelley*, the nine e-mails and dozens of  
16 attachments were received over a time span of at least ten months. *Id.* at 1054. In the  
17 present case, one e-mail was sent *on one occasion* (up to eight months before the search).

18 In a particularly compelling dissent, Judge Thomas in *Kelley* describes the plague  
19 of “billions of email messages” that are sent as daily as “spam,” and explains that “a  
20 substantial proportion consists of pornographic images or links to pornographic  
21 websites.” *Id.* at 1055-56 (Thomas, C.J., dissenting). As Judge Thomas warns, “Spam  
22 may also contain child pornography or links to illegal websites containing child  
23 pornography.” *Id.* at 1056. Indeed, in his dissent Judge Thomas collects documented  
24 examples of child porn sent to unwitting email recipients. *Id.* at 1056 & n.3. Judge  
25 Thomas vigorously questioned the majority’s holding that the “mere transmission of  
26 unsolicited pornographic emails creates probable cause to search the entire house of the  
27 email recipient.” *Id.* at 1056.

28 Responding to these criticisms, the decision’s author, Judge Rymer, concedes that

1 the “spam argument” might be “forceful” in “different circumstances.” *Id.* at 1053. She  
2 reassures the reader, however, that *Kelley* did not run afoul of this spam concern because  
3 the case did not involve a *single* e-mail:

4 Kelley did not receive *an* e-mail containing illicit pornographic images, or even  
5 two or three, but nine such emails sent to more than one of his screen names. That  
6 he received the same kind of attachments on multiple occasions and in different  
screen names makes it more probable that the transmissions were not accidental.

7 *Id.* (emphasis in original).

8 The probable cause “showing” of Detective Jones is precisely what *Kelley* was not:  
9 a single e-mail, with a single attachment, sent to a single screen name, on a single  
10 occasion. There is no showing in the affidavit that Mr. Craig solicited this e-mail, that he  
11 ever actually received this e-mail, that he opened it on a home computer, or that he had  
12 any interest in receiving this type of image. It is, put simply, the spam nightmare  
13 described by Judge Thomas and acknowledged by Judge Rymer in *Kelley*. It is not  
14 probable cause.

15 Consider the Fourth Amendment ramifications if the Jones’s affidavit was  
16 sufficient. Every federal practitioner in the Northern District of California must have an e-  
17 mail address to comply with ECF filing requirements. Those addresses are a matter of  
18 public record. If the *Craig* affidavit survives, any child pornographer could send a single  
19 unsolicited e-mail – with a single child porn attachment – to any and all of these  
20 attorney’s addresses (including, incidently, to any court e-mail address). If that  
21 pornographer’s computer ever is discovered, probable cause will suddenly blossom across  
22 the district and the government would have *carte blanche* to search every federal  
23 counsel’s personal and work computers. Is this the point to which the Fourth Amendment  
24 has devolved?

25 This hypothetical is not a “parade of horrors” or a *reductio ad absurdum*: Mr.  
26 Craig’s is the case that finally pushes up to – and beyond – the limits of the Fourth  
27 Amendment in computer searches. The Court is asked to reflect on unsolicited e-mails  
28

1 that it has received on business or personal accounts. Is it prepared to concede that every  
2 one of those unsolicited e-mails fairly reflects the Court's interest in whatever subject the  
3 spam message is trying to hawk? Would a *single* one of those spam messages establish  
4 probable cause that the item or merchandise offered in the e-mail would be found in the  
5 Court's home, or in chambers?

6 It is conceded that in *Illinois v. Gates*, 462 U.S. 213 (1983), in *Gourde*, 440 F.3d at  
7 1069, and in *Kelley*, the Supreme Court and the Ninth Circuit have been increasingly  
8 reluctant to "flyspeck" the determination of the magistrate judge, and have emphasized  
9 the "great deference" to be afforded to the reviewing magistrate. *Gourde*, 482 F.3d at  
10 1050. The government will undoubtedly emphasize this trend at length in its Opposition,  
11 arguing that this Court's probable cause inquiry is now the "totality of the circumstances"  
12 and trumpeting the "preference to be afforded to warrants." *Id.* at 1050-51.

13 The defense flatly concedes that this language – and this legal trend – exists. If,  
14 however, the Jones affidavit is sufficient in *this* case, on *these* facts, then the Fourth  
15 Amendment responsibilities of this Court have been so minimized as to render the  
16 probable cause inquiry – and the Fourth Amendment itself – a nullity. As the Ninth  
17 Circuit warned in *Gourde*, "Given the current environment of increasing government  
18 surveillance and the long memories of computers, we must not let the nature of the  
19 alleged crime, child pornography, skew our analysis or make us 'lax' in our duty to guard  
20 the privacy protected by the Fourth Amendment." *Id.* at 1074. The *Craig* search takes  
21 *Hay*,<sup>10</sup> takes *Gourde*, takes *Kelley* to the Fourth Amendment breaking point – and far  
22 beyond. This Court should suppress.

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23  
24  
25  
26 <sup>10</sup> *United States v. Hay*, 231 F.3d 630, 633-34 (9th Cir. 2000) (upholding warrant  
27 for defendant's computer in light of information that his internet address had received  
28 transmission of nineteen images of child pornography from a known trader).



**C. The Fact that Mr. Craig Was a Sex Registrant Does Not Provide Sufficient Probable Cause**

The government will attempt to salvage the defective application by pointing out that Jones's affidavit described Mr. Craig as a registered sex offender:

Your Affiant further conducted a records check and discovered Timothy Charles Craig (09.03.1958) residing at 3271 Beard Road, Napa, California is a PC290 registered sex offender with the California Department of Justice.

*Exh. B* at D000006. That fact does nothing, however, to advance the probable cause showing, because so many offenses in California fall under the registration requirement – and Detective Jones did *not specify the offense of conviction* for Mr. Craig.

The (California) Sex Offender Act is codified at California Penal Code § 290.<sup>11</sup> It

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<sup>11</sup> § 290. Sex Offender Registration Act; lifetime duty to register within specified number of days following entrance into or moving within a jurisdiction; offenses requiring mandatory registration

(a) Sections 290 to 290.023, inclusive, shall be known and may be cited as the Sex Offender Registration Act. All references to “the Act” in those sections are to the Sex Offender Registration Act.

(b) Every person described in subdivision (c), for the rest of his or her life while residing in California, or while attending school or working in California, as described in Sections 290.002 and 290.01, shall be required to register with the chief of police of the city in which he or she is residing, or the sheriff of the county if he or she is residing in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence within, any city, county, or city and county, or campus in which he or she temporarily resides, and shall be required to register thereafter in accordance with the Act.

(c) The following persons shall be required to register:

Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 187 committed in the perpetration, or an attempt to perpetrate, rape or any act punishable under Section 286, 288, 288a, or 289, Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, or 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, Section 266j, 267, 269, 285, 286, 288, 288a, 288.3, 288.4, 288.5, 288.7, 289, or 311.1, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; any statutory predecessor that includes all elements of one of the above-mentioned offenses; or any person



1 requires sex registration for literally dozens of state offenses, from rape, to sexual battery,  
 2 to incest, to indecent exposure. *See Exh. I, California Crimes Requiring Sex Registration*  
 3 *Chart.*

4 It is not a fair – or even a particularly logical – inference to assume that someone  
 5 convicted of the rape of an adult, or incest with an adult sibling,<sup>12</sup> or a female stripper  
 6 convicted of indecent exposure for dancing “bottomless” in a topless bar,<sup>13</sup> will have any  
 7 particular interest in child pornography. There is certainly no attempt by Detective Jones  
 8 to advance that inferential link. *See Exh. B.* at D000006.

9 The Ninth Circuit has forcefully rejected unsubstantiated inferences by “experts”  
 10 that opine as to the collection habits of “pedophiles.” *See Weber*, 923 F.3d at 1341. In  
 11 *Weber*, the Court discounted an affiant’s “expert opinion” about a class of persons. *Id.* at  
 12 1345. As the Court explained, “if the government presents expert opinion about the  
 13 behavior of a particular class of persons, for the opinion to have any relevance, the  
 14 affidavit must lay a foundation which shows that the *person subject to the search is a*  
 15 *member of the class.*” *Id.* at 1345 (emphasis added).

16 Detective Jones’s broad reference to Section 290 registration was not paired with  
 17 any expert opinion that this “class of persons” is more likely to receive child  
 18 pornography. The government cannot now, *nunc pro tunc*, spin inferences from Section  
 19 290 registration that were not before the authorizing magistrate. *Taylor*, 716 F.2d at 705  
 20 (explaining that the “validity of a search warrant depends upon the sufficiency of what is

21 \_\_\_\_\_  
 22 who since that date has been or is hereafter convicted of the attempt or conspiracy to commit any of the  
 23 above-mentioned offenses.  
 24 Cal Penal Code § 290.

25 <sup>12</sup> *See, e.g., People v. Adinolfi*, 106 Cal. App. 261, 262 (1930) (“The defendant was  
 26 convicted of the crime of incest accomplished with his adult sister, by whom four children  
 27 were born as a result of their illicit relationship.”)

28 <sup>13</sup> *See, e.g., People v. Newton*, 9 Cal. App.3d Supp. 24 (1970) (upholding indecent  
 exposure conviction of bottomless-dancing women in a topless bar).

1 found within the four corners of the underlying affidavit.”) Finally, there *are* no  
2 reasonable inferences that can be drawn from the fact that Mr. Craig belonged to the very  
3 large and diverse class of sex registrants. Because so many varied sex crimes require  
4 Section 290 registration, membership in that class does not increase the likelihood that  
5 Mr. Craig was in the possession of child pornography. Detective Jones’s reference to Mr.  
6 Craig’s sex registration status does not salvage this deficient probable cause showing.

7 **III. Even if the Federal Materials Were Attached to the Warrant Application,**  
8 **There Was Insufficient Probable Cause to Support the Search Warrant**

9 In the face of certified court records and Judge Anton’s declaration, the  
10 government will not meet its burden to show that the federal materials described in parts  
11 3, 4, 5 and 6 above were included in Detective Jones’s search warrant application.

12 Even if those materials *were* included, however, the warrant is still fatally  
13 deficient. The federal materials included in the packet that Detective Jones claims he  
14 submitted add nothing to the deficient probable cause showing. *See Exh. B, ROI #9, AOL*  
15 *Warrant, AOL Summons, AOL Summons Returns*. None of the defense challenges to the  
16 Napa search warrant are rebutted by evidence from the federal materials.

17 The defense challenges probable cause because the image attached to Message  
18 #223 was not provided to the magistrate or described in detail in Detective Jones’s  
19 affidavit. That image was not, however, contained in the federal materials in the packet  
20 and was not described in any more detail than is found in Jones’s affidavit: he simply  
21 copied and pasted text from ROI #9. *See id.* Moreover, the federal materials do not  
22 identify the person who identified the image as child pornography, or describe that  
23 person’s expertise or lack thereof. *Id.*

24 The defense challenges probable cause because there was only a single e-mail to  
25 the screen name “Limosdude,” with a single image of alleged child porn described in  
26 Jones’s affidavit. The federal materials do not, however, describe any additional e-mails  
27 or images sent to “Limosdude.”

28 The defense challenges the probable cause that the single e-mail and image would

1 be found at the Napa residence. Nothing in the federal materials, however, add any  
2 additional showing that Mr. Craig actually received this e-mail, or that he received it on a  
3 home computer, or that it would be stored there.

4 In the following section, the defenses challenges probable cause because the  
5 evidence in Detective Jones's affidavit was stale. That evidence, however, was simply  
6 cribbed from the federal materials (which long predated the Napa affidavit). There is  
7 nothing in the federal materials – no expert opinion about child porn storage, example –  
8 that saves the affidavit from a staleness attack.

9 As a factual matter the federal materials were not provided to Judge Anton and this  
10 Court should disregard them. Even if they *were* attached to the affidavit, however, they  
11 do nothing to bolster the patently insufficient probable cause showing in the warrant.

#### 12 **IV. The Evidence in Support of the Probable Cause Showing Was Stale**

13 According to Detective Jones, Message # 233 and its attached image were sent to  
14 the “Limosdude” screen name in January or February of 2007. *See Exh. B, Jones Affidavit*  
15 at D00012. The search warrant application, however, was not submitted until August 7,  
16 2007: seven or eight months later. Because the information regarding Lee Sly's  
17 transmission of Message #223 was stale, there was no probable cause that the search at  
18 the Napa residence would produce fruits of a crime.

19 The test for the staleness of a search warrant focuses on the likelihood that the  
20 items to be seized will be in the place to be searched. “[A] search warrant is not stale  
21 where there is sufficient basis to believe, *based on a continuing pattern or other good*  
22 *reasons*, that the items to be seized are still on the premises.” *United States v. Nance*, 962  
23 F.2d 860, 864 (9th Cir. 1992) (emphasis added) (citation omitted). There were no good  
24 reasons articulated in the Jones affidavit why Message # 223 – and the image allegedly  
25 attached to it – would exist at the Napa residence seven or eight months after it was sent  
26 by Lee Sly.

27 The Ninth Circuit has admittedly rejected staleness challenges to search warrants  
28 in child pornography cases when a similar time period has elapsed. *See, e.g., United*

1 *States v. Hay*, 231 F.3d 630, 636 (9th Cir. 2000) (rejecting staleness challenge after six  
 2 month delay). Critically, however, in *Hay* – and every other case that has rejected similar  
 3 staleness challenges – there is expert opinion in the affidavit that explains why child  
 4 pornography may be found in collectors’ computers long after a message has been  
 5 transmitted. *See id.* at 636 (describing holding in *Lacy* that affiant’s opinion about the  
 6 storage of child porn undermined staleness challenge after delay of ten months, and  
 7 holding the same in light of affiant’s opinion in *Hay* case); *see also Weber*, 923 F.3d at  
 8 1341 (“The affidavit also contains [Detective] Dworin’s opinion that ‘pedophiles and/or  
 9 child pornography collectors’ do not destroy photographs but retain them for ‘many  
 10 years.’”)

11 Nothing in Detective Jones’s affidavit offers any opinion or any data that a single  
 12 image of child porn would survive six months (for that matter, the federal materials are  
 13 equally devoid of any such opinions).

14 This Court cannot take retrospective judicial notice on behalf of Judge Anton that  
 15 images of child pornography are often collected and stored for long periods. Viewing the  
 16 four corners of the Napa search warrant application, there is no evidence or opinion from  
 17 which Judge Anton could reasonably infer that a single image of (alleged) child  
 18 pornography would still exist seven to eight months after it was transmitted. The  
 19 incriminating information in Detective Jones’s affidavit was, therefore, too stale to serve  
 20 as probable cause for the Napa search.

21 **V. There Was Insufficient Probable Cause to Believe Evidence of Child**  
 22 **Pornography Would Be Found at the Napa Residence**

23 The inferences that the government will argue from Detective Jones’s affidavit are  
 24 that Lee Sly sent (alleged) child porn to “Limosdude,” that Tim Craig was “Limosdude,”  
 25 that Tim Craig lived at this Napa address, and that there was therefore probable cause for  
 26 the search. There is, however, insufficient probable cause to support the search *at that*  
 27 *address*.

28 In *Hay*, the defendant challenged the probable cause for the search of his particular

1 apartment. *Hay*, 231 F.3d at 635-36. The Court rejected that challenge, because there  
 2 were FTP<sup>14</sup> transmissions directly to an IP address that was associated with Hay's  
 3 computer *in that apartment*, and because the defendant told the government that he used  
 4 this apartment computer exclusively. *Id.* at 635. The Ninth Circuit in *Hay* distinguished  
 5 *United States v. Rowland*, 145 F.3d 1194, 1205 (9th Cir. 1998), where there was  
 6 insufficient evidence that the subject of investigation would keep pornographic files at  
 7 home. *Id.* at 635.

8 Mr. Craig's case is more akin to *Rowland* than to *Hay*. Detective Jones only opines  
 9 that "individuals engaged in the possession, and distribution of child pornography will  
 10 store those files in various locations, and on various forms of digital media including  
 11 computer hard drives, and external storage locations." *Exh. B.* at D000008. Unlike *Hay*,  
 12 there is no evidence that the "Limosdude" e-mail was ever received or opened by Tim  
 13 Craig on a computer at the Napa residence (instead of, for example, a work computer or a  
 14 library computer). Instead, there is an "expert" opinion that actually explains that child  
 15 porn can be stored all over, including "external storage locations." *Id.*

16 Because the affidavit lacks sufficient probable cause that this *single* e-mail, with  
 17 this *single* attachment would be recovered at the specific location of the Napa residence,  
 18 the search warrant was fatally flawed and the fruits of the search must be suppressed.

19 **VI. Because Detective Jones Intentionally Misstated Material Issues of Facts,**  
 20 **Suppression is Warranted Under *Franks***

21 Mr. Craig challenges the search of the Napa residence on the grounds that  
 22 Detective Jones's warrant affidavit contained misstatement of fact or omissions which  
 23 affected the issuing magistrate's determination. *See Franks v. Delaware*, 438 U.S. 154  
 24 (1978) (factual misstatements); *see also United States v. Whitworth*, 856 F.2d 1268, 1280  
 25 (9th Cir. 1988) (omissions).

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27 <sup>14</sup> "FTP" stands for "File Transfer Protocol," "a method of directly transferring  
 28 files between two computers." *Hay*, 231 F.3d 630, 632 & n.2.

1           **A.     Detective Jones Misrepresented the Returns of the Ohio AOL Warrant**

2           As described in detail in footnote three, *supra*, Detective Jones misstated the  
3 returns of the Ohio AOL Warrant in his search warrant application. In his affidavit,  
4 Detective Jones stated the following:

5           On March 1, 2007 agents served America Online with a federal search warrant for  
6 Sly's email account information. A further examination of his account revealed  
7 125 other individuals engaged in trading child pornography (Reference  
8 Attachment). All the investigative leads contained at least one image or movie file  
9 of child pornography received, forwarded, and/or traded by each target in January  
10 and February of 2007. **The America Online search warrant results indicated  
that Timothy Craig was a suspect in this investigation. The records indicated  
the following:**

11           "Limosdude"- **Tim Craig, 3271 Beard Rd., Napa, CA, 94558, (707)257-1282,**  
12 Message # 223 in Sly's "sent" folder.

13 *Exh. B., Det. Jones Affidavit at 2, D00006:16-24* (emphases added). The fair inference  
14 from this assertion is that Lee Sly send child pornography to Tim Craig under the screen  
15 name, "Limosdude." Another fair inference is that Lee Sly – a child pornography  
16 distributor – knew Mr. Craig well enough to have actual, real name, his address and his  
17 phone number in his e-mail "sent" folder on AOL. A third fair inference (akin to the  
18 inferences found in *Kelley*) is that if a known child pornography distributor has all of this  
19 personal information – including a real name – then it is unlikely that the child porn e-  
20 mail to Mr. Craig was simply spam. This evidence – and inferences from it – were  
21 therefore central to Judge Anton's evaluation of the warrant application.

22           The problem with these inferences is that Detective Jones lied in his affidavit. The  
23 AOL Search Warrant returns of data in Lee Sly's AOL account did *not* reveal that Mr.  
24 Craig's name, address, and phone number were in Sly's AOL "sent e-mail" records.  
25 Instead, some (unidentified) person presumably associated with ICE reviewed the e-mails  
26 in Sly's AOL account and culled a list of 125 screen names involved with "child  
27 pornography." *See Exh. B, ROI #9 at 3, D000012.* The AOL warrant produced just screen  
28 names from Sly's account: not personal information. There is nothing in any report that

1 suggests that those screen names had personal, actual names associated with them – or  
2 addresses, or phone numbers.

3 Once ICE had these screen names further investigation was required. Special  
4 Agent Hagan went back to AOL with a summons. *See id.* at D000040. That summons was  
5 for IP logins and subscriber information for these 125 screen names. *Id.* AOL complied  
6 with the summons and produced the requested data, which included Mr. Craig’s name and  
7 the Napa address and phone number. *Id.* at D00044. Of course, had all of this data been in  
8 Lee Sly’s AOL e-mail account originally, Agent Hagan would not have had to issue this  
9 AOL summons.

10 Detective Jones misrepresented a material fact when he reported that the warrant  
11 for the AOL information from Lee Sly’s e-mail account produced Tim Craig’s actual  
12 name, address, and phone number. This fact was material because it inaccurately  
13 bolstered the relationship between Sly and Craig (when, in fact, there was no  
14 relationship). If Sly had all of Craig’s actual, personal information in his AOL account, it  
15 made it significantly less likely that this e-mail and image were a one-off spam message  
16 that was blast broadcast to random screen names. This misstatement thus bore directly on  
17 the probable cause inquiry. This Court should accordingly suppress the search arising  
18 from this false affidavit in light of this *Franks* misstatement.

19 **B. Detective Jones Misstated a Material Fact by Characterizing the Image**  
20 **Attached to Message # 223 as “Child Pornography”**

21 This case before the Court starkly illustrates the dangers of permitting law  
22 enforcement officials – instead of neutral, detached magistrates – to make the subjective,  
23 conclusory legal findings that any particular image is “child pornography.” *See generally*  
24 *Hill*, 459 F.3d at 971 & n.6 (discussing shortcomings of computer search warrants when  
25 the magistrate is given only a written description and not the images themselves, and  
26 emphasizing the suppression remedy when the agent does not describe the image in good  
27 faith); *Battershell*, 457 F.3d at 1053 (“It would have been preferable in the affiant in this  
28 case had included copies of the photographs [to which the affiant had access] in the



1 warrant application.”) The issue is of particular import here, because the image allegedly  
2 attached to Message #223 was not child pornography.

3 The Ninth Circuit has described the familiar *Dost* factors as a “starting point for  
4 judges to use in determining whether a particular image is likely so presented by the  
5 photographer as to arouse or satisfy the sexual cravings of a voyeur.” *Hill*, 459 F.3d at  
6 972 (internal citations and quotation omitted). The *Dost* factors, arising from a Southern  
7 District court decision, ask six questions about an image:

8 (1) whether the focal point of the visual depiction is on the child’s genitalia or  
9 pubic area;

10 (2) whether the setting of the visual depiction is sexually suggestive, i.e., in a place  
11 or pose generally associated with sexual activity;

12 (3) whether the child is depicted in an unnatural pose, or in inappropriate attire,  
13 considering the age of the child;

14 (4) whether the child is fully or partially clothed, or nude;

15 (5) whether the visual depiction suggests sexual coyness or a willingness to engage  
16 in sexual activity;

17 (6) whether the visual depiction is intended or designed to elicit a sexual response  
18 in the viewer.

19 *Id.* (citing *United States v. Dost*, 636 F. Supp. 828, 832 (S.D. Cal. 1986), *aff’d sub nom.*  
20 *United States v. Wiengand*, 812 F.2d 1239 (9th Cir. 1987)).

21 In *Hill*, the Ninth Circuit found that detailed descriptions in an affidavit of images  
22 satisfied the probable cause requirement for child pornography, “when the girls’ clothing  
23 was opened so as to reveal their breasts and pubic areas, with the girls appearing in  
24 sexually suggestive poses.” *Id.* at 972-73. As described above, the present case falls far  
25 short of *Hill*, because in Detective Jones affidavit there was *no* description of the image  
26 attached to Message #223.

27 This failure is fatal: it matters not to the probable cause analysis whether the image  
28 *not* described to the magistrate was a particularly repulsive image of actual sexual contact

1 with minors, or – as here – an image that is not child pornography at all, but instead child  
2 erotica protected by the First Amendment.

3 The significance of the actual content of #223 image goes to *Franks* misstatements  
4 in the affidavit. The fact that the image (allegedly) attached to Message #223 was actually  
5 child erotica is a *Franks* omission. Detective Jones’s flat assertion that this image was  
6 child pornography assured the magistrate that at least one e-mail with a *clearly unlawful*  
7 *image* made its way to the “Limosdude” e-mail address from known child pornography  
8 distributor Lee Sly. That is not the case if this Court agrees with the defense that this  
9 image – that displays no breasts or genitalia – is not clearly child pornography. By failing  
10 to describe the contents of this image, and by flatly asserting that it was child  
11 pornography, Detective Jones overstated the evidentiary significance of the picture. If the  
12 detective ever saw the image (a fact not yet established)<sup>15</sup> this overstatement was a  
13 material misstatement that fatally undermines the probable cause showing and that  
14 warrants suppression.

## 15 **VII. The *Leon* Good Faith Exception Can Not Salvage this Warrant**

16 The only refuge of the government from an affidavit so thoroughly riddled with  
17 flaws is to cry, “good faith” and seek the protection of *United States v. Leon*, 468 U.S.  
18 897, 926 (1984). Even *Leon*, however, cannot save the search in this case.

19 Under *Leon*, “[e]vidence seized pursuant to a facially valid search warrant which  
20 later is held to be invalid may nevertheless be admissible if officers conducting the search  
21 acted in good faith and in reasonable reliance on the warrant.” *United States v. Kow*, 58  
22 F.3d 423, 428 (1995). “The *government bears the burden* of proving that reliance upon  
23 the warrant was objectively reasonable.” *Id.* (emphasis added).

24 Because the government bears the burden of proving that reliance on the warrant  
25

---

26 <sup>15</sup> If Detective Jones did *not* see the image before the application, then this is a  
27 *Franks* omission. He would have then falsely represented that the image was child  
28 pornography, without revealing that he had never, in fact, actually seen the image.

1 was objectively reasonable, this argument is a burden that must first be shouldered by the  
2 government in its Opposition. Mr. Craig will, however offer some observations that will  
3 help focus the inquiry.

4 First, there can be no question that the law on probable cause for child  
5 pornography search warrants was clearly established when Detective Jones sought his  
6 search warrant. The *Battershell* decision – rejecting a non-specific description of an  
7 image as sufficient to establish probable cause for a child pornography search – was  
8 decided August 10, 2006. *See Battershell*, 457 F.3d at 1051. This was the controlling law  
9 of the Ninth Circuit on Fourth Amendment probable cause for a year before Detective  
10 Jones sought his warrant. Moreover, the Ninth Circuit had characterized the analysis of  
11 the Court in *Battershell* as a *holding* a year before the search warrant application in the  
12 present case. *See Hill*, 459 F.3d at 973 (“*Cf. Battershell*, 457 F.3d at 1048 (**holding** that  
13 an affidavit describing a ‘young female (8-10 YOA) naked in a bathtub’ is insufficient to  
14 establish probable cause to believe the image is lascivious.”) (emphasis added) (decided  
15 August 11, 2006).

16 Similarly, the *Kelley* decision – disclaiming probable cause based on *one* e-mail –  
17 was decided five months before the search warrant application. *See Kelley*, 482 F.3d at  
18 1053.

19 The present case is not a situation where there was any ambiguity in the law, or  
20 where the law was not “clearly established” at the time of the search warrant application.  
21 *Cf. United States v. Brown*, 951 F.2d 999, 1006 (9th Cir. 1991) (“We hold that, because  
22 the law was not clearly established at the time the search warrants were issued, the  
23 affiants could have entertained a good faith belief in their validity.”) Moreover, it is the  
24 Fourth Amendment law *in the Ninth Circuit* that should control the inquiry – and Circuit  
25 law was clearly established well before August 7, 2007. *See, e.g., Edgerly v. City and*  
26 *County of San Francisco*, 495 F.3d 645, 657 (9th Cir. 2007) (holding in civil rights  
27 action, “it is clearly established *in the Ninth Circuit* that post-booking strip searches  
28 without reasonable suspicion are unconstitutional.”) (emphasis added); *see also Brown*,

1 951 F.2d at 1006 (holding that the test established by the Supreme Court in civil rights  
2 actions can serve as a guide in search warrant analysis).

3 It also bears emphasis that the *Leon* good faith exception does *not* apply “where an  
4 affiant misleads the issuing magistrate or judge by making a false statement or recklessly  
5 disregarding the truth in making a statement,” and “where the affidavit upon which the  
6 warrant is based is so lacking in indicia of probable cause that no reasonable officer could  
7 rely upon it in good faith.” *United States v. Crews*, 502 F.3d 1130, 1136 (9th Cir. 2007)  
8 (discussing *Leon*, 486 U.S. at 923-26). Both of those scenarios occurred in the present  
9 case. As discussed in the *Franks* section, *supra*, Detective Jones mislead the issuing  
10 magistrate by misrepresenting the returns of the Ohio AOL search warrant, and by not  
11 accurately describing the image allegedly attached to Message # 223.

12 Moreover, the affidavit of Jones is so lacking in indicia of probable cause that no  
13 reasonable officer could rely on it in good faith. The test for whether a warrant is so  
14 deficient as to preclude *Leon* good faith “is whether the affidavit was sufficient to create  
15 disagreement among thoughtful and competent judges as to the existence of probable  
16 cause.” *United States v. Hove*, 848 F.2d 137 (9th Cir. 1988) (quoting *Leon*, 468 U.S. at  
17 926). The Jones affidavit flatly fails this test. It does not describe the offending image, it  
18 rests entirely upon a sole e-mail to a sole screen name, its evidence is stale, there is no  
19 showing the image would be preserved, and there was no showing the image would be  
20 recovered on a computer at the Napa address. *See United States v. Fowlie*, 24 F.3d 1059,  
21 1067 (9th Cir. 1994) (“An officer does not manifest objective good faith in relying on a  
22 warrant based on an affidavit that is so lacking in indicia of probable cause that official  
23 belief in its existence is entirely unreasonable.”).

24 The Court should also note that there has been no showing thus far that Detective  
25 Jones relied on the advice of an attorney when he crafted his affidavit. *See United States*  
26 *v. Dozier*, 844 F.2d 701, 708 (9th Cir. 1988) (acknowledging decision that had found  
27 good faith when affidavit had undergone four levels of attorney review, but rejecting  
28 good faith when only one United States Attorney had reviewed the warrant); *see also*

1 *United States v. Freitas*, 856 F.2d 1425, 1431 (9th Cir. 1988) (holding that advice of  
 2 AUSA on warrant application supported good faith showing); *but see Kow*, 58 F.3d 423,  
 3 427 (rejecting reliance on AUSA's advice as a basis for applying the good faith exception  
 4 in a facially invalid, overbroad warrant).

5 Finally, Detective Jones cannot now, in retrospect, bootstrap facts into the  
 6 application process to avail himself of the *Leon* good faith exception:

7 *Leon* does not extend . . . to allow the consideration of facts known only to an  
 8 officer and not presented to a magistrate. The *Leon* test for good faith reliance is  
 9 clearly an objective one and it is based solely on facts presented to the magistrate .  
 10 . . . An obviously deficient affidavit cannot be cured by an officer's later testimony  
 on his subjective intentions or knowledge.

11 *Hove*, 848 F.2d at 140 (internal quotations and citation omitted); *see also United States v.*  
 12 *Luong*, 470 F.3d 898, 905 (9th Cir. 2006) (“[W]hen the affidavit itself lacks “*all indicia*  
 13 of probable cause, it would unduly undermine the [four corners requirement] to permit  
 14 extrinsic indicia of probable cause to be presented.”) (emphasis in original). In *Luong*,  
 15 the government conceded that the issuing warrant was not supported by probable cause. It  
 16 nonetheless sought the protection of the good faith exception because of additional  
 17 evidence that the officer had orally conveyed to the magistrate, but failed to include in the  
 18 affidavit. *Id.* at 903. The Ninth Circuit rejected this approach. Because probable cause  
 19 must be established “by Oath or affirmation” the Court refused to apply the good faith  
 20 exception. *Id.* at 905. As the Court explained, “[i]f unsworn, unrecorded oral colloquies,  
 21 which may not be used to establish probable cause, *are* admissible to establish good faith,  
 22 the constitutional and prudential standards for showing probable cause will be  
 23 undermined.” *Id.* (emphasis in original). Consequently, the Court only considered the  
 24 affidavits submitted at the time the magistrate made the probable cause determination.

25 Ultimately, Detective Jones's search warrant for the Napa address was “the kind of  
 26 ‘bare bones’ affidavit that is deficient under *Leon*.” *Weber*, 923 F.3d at 1346. In *Weber*,  
 27 the Ninth rejected a search warrant for child pornography that – like the warrant at issue  
 28 here – was so deficient in probable cause that the government acted entirely unreasonably

1 in obtaining it. *Id.* The Court in *Weber* stressed the fact that there were no time pressures  
2 on the agents who sought the search warrant, and therefore no mitigating explanation for  
3 the plainly deficient search warrant application. *Id.*

4 This is precisely the situation in the present case. The (allegedly) offending e-mail  
5 from Lee Sly to Limosdude was sent in *January or February* of 2007. *See Exh. B* at  
6 D00012. Agent Hagan obtained the AOL Warrant in Ohio in March, 2007. *See Exh. B*,  
7 *AOL Warrant* at D00023. ICE Special Agent Hagan didn't distribute her solicitation to  
8 local law enforcement agencies until at least June of 2007 – judging by the “creation  
9 date” of the image attached to Message # 223. Detective Jones claims that he first  
10 received information relating to this case in July 2007. *See Exh. B.* at D00006:6. His did  
11 not, however, seek a warrant until August 7, 2007.

12 Given this seven to eight month delay from transmission of the e-mail to the  
13 warrant, there is no showing in this record – and there can be no credible argument – that  
14 Detective Jones was laboring under any “time pressure . . . when he prepared the warrant  
15 application.” *Weber*, 923 F.3d at 1346. As in *Weber*, the *Leon* “good faith” exception  
16 cannot salvage the “bare bones” probable cause showing that is fatal to the search warrant  
17 before this Court.

**Conclusion**

For the foregoing reasons, the defendant Timothy Craig respectfully asks that this Court suppress all fruits of an unlawful search conducted of the Beard Road residence in Napa on August 8, 2007.

Dated: July 31, 2008

Respectfully submitted,

BARRY J. PORTMAN  
Federal Public Defender

/s

STEVEN G. KALAR  
Assistant Federal Public Defender



# EXHIBIT A

AO 257 (Rev. 6/78)

**DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT**BY: ☐ COMPLAINT ☐ INFORMATION ☒ INDICTMENT  
☐ SUPERSEDING**OFFENSE CHARGED**18 U.S.C. § 2252(a)(2)– Receipt of  
Child Pornography; 18 U.S.C. §  
2252(a)(4)(B)– Possession of Child  
Pornography☐ Petty  
☐ Minor  
☐ Misdemeanor  
☒ Felony**E-filing**

PENALTY:

See Attached Penalty Sheet

**PROCEEDING**

Name of Complainant Agency, or Person (&amp; Title, if any)

ICE Special Agent Greg Pokalski / Napa Sheriff Deputies Todd Hancock and  
Joe Jones☐ person is awaiting trial in another Federal or State  
Court, give name of court☐ this person/proceeding is transferred from another  
district per (circle one) FRCrP 20, 21 or 40. Show  
District☐ this is a reprosecution of  
charges previously dismissed  
which were dismissed on  
motion of:☐ U.S. Att'y ☐ Defense☐ this prosecution relates to a  
pending case involving this same  
defendant☒ prior proceedings or appearance(s)  
before U.S. Magistrate regarding  
this defendant were recorded underSHOW  
DOCKET NO.MAGISTRATE  
CASE NO.

08-70096 MEJ

Name and Office of Person  
Furnishing Information on  
THIS FORM

Joseph P. Russoniello

☒ U.S. Att'y ☐ Other U.S. AgencyName of Asst. U.S. Att'y  
(if assigned)

Denise Marie Barton

Name of District Court and/or Judge/Magistrate Location  
NORTHERN DISTRICT OF CALIFORNIA

DEFENDANT, U.S.

TIMOTHY CRAIG

DISTRICT COURT NUMBER

**JSW****DEFENDANT****IS NOT IN CUSTODY**

- 1) ☐ Has not been arrested, pending outcome this proceeding.  
If not detained give date any prior summons  
was served on above charges
- 2) ☐ Is a Fugitive
- 3) ☐ Is on Bail or Release from (show District)

**IS IN CUSTODY**

- 4) ☒ On this charge
- 5) ☐ On another conviction
- 6) ☐ Awaiting trial on other charges
- ☐ Fed'l ☐ State

If answer to (6) is "Yes", show name of institution

Has detainer  
been filed? ☐ Yes ☐ NoIf "Yes"  
give date  
filed**DATE OF  
ARREST**

Month/Day/Year

2/25/08

Or... if Arresting Agency &amp; Warrant were not

**DATE TRANSFERRED  
TO U.S. CUSTODY**

Month/Day/Year

☐ This report amends AO 257 previously submitted**ADDITIONAL INFORMATION OR COMMENTS****PROCESS:**☐ SUMMONS ☒ NO PROCESS\*☐ WARRANT Bail Amount: \_\_\_\_\_

If Summons, complete following:

☐ Arraignment ☐ Initial Appearance

Defendant Address: \_\_\_\_\_

\*Where defendant previously apprehended on complaint, no new summons  
or warrant needed, since Magistrate has scheduled arraignment

Date/Time: \_\_\_\_\_

Before Judge: \_\_\_\_\_

Comments: \_\_\_\_\_

PENALTY SHEET

UNITED STATES V. TIMOTHY CRAIG

*Count 1: 18 U.S.C. § 2252(a)(2): Receipt of Child Pornography*

Class B Felony

Maximum Prison Term of Forty Years

**Mandatory Minimum Prison Term of Fifteen Years**

Maximum Fine of \$250,000

Supervised Release of Not Less Than 5 years

Maximum of Lifetime Supervised Release

Registration as a Sex Offender

Mandatory Special Assessment of \$100

*Count 2: 18 U.S.C. § 2252(a)(4)(B): Possession of Child Pornography*

Class C Felony

Maximum Prison Term of Twenty Years

Mandatory Minimum Term of 10 Years

Maximum Fine of \$250,000

Supervised Release of Not Less Than 5 years

Maximum of Lifetime Supervised Release

Registration as a Sex Offender

Mandatory Special Assessment of \$100

# United States District Court

FOR THE  
NORTHERN DISTRICT OF CALIFORNIA  
CRIMINAL DIVISION  
VENUE: SAN FRANCISCO

JSW

FILED  
08 MAY 15 PM 12:56  
SHARON HILF  
U.S. DISTRICT COURT  
SAN FRANCISCO, CALIFORNIA

E-filing

v.

CR 08

0329

TIMOTHY CRAIG

JSW

UNITED STATES OF AMERICA,

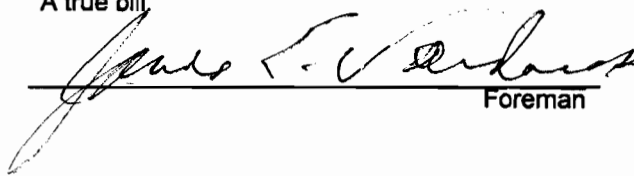
DEFENDANT.

## INDICTMENT

Title 18 U.S.C. § 2252(a)(2) - Receipt of Child  
Pornography  
Title 18 U.S.C. § 2252(a)(4)(B) - Possession of Child  
Pornography

INDICT

A true bill

  
Foreman

Filed in open court this 15 day of MAY 2008

  
Clerk

BETTY FONG

EDWARD M. CHEN  
UNITED STATES MAGISTRATE JUDGE

Bail, \$  
No Process

FILED  
08 MAY 15 PM 12:56  
RECEIVED  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

E-filing

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

JSW

UNITED STATES OF AMERICA,

Plaintiff,

v.

TIMOTHY CRAIG,

Defendant.

No.

VIOLATIONS: 18 U.S.C. § 2252(a)(2) –  
Receipt of Child Pornography; 18 U.S.C. §  
2252(a)(4)(B) – Possession of Child  
Pornography

SAN FRANCISCO VENUE

INDICTMENT

The Grand Jury charges:

COUNT ONE: (18 U.S.C. § 2252(a)(2) - Receipt of Child Pornography)

Beginning on or about March 1, 2007 and continuing until on or about August 8, 2007, in  
the Northern District of California, the defendant,

TIMOTHY CRAIG,

did knowingly receive at least one visual depiction that had been mailed, shipped, and  
transported in interstate and foreign commerce, by computer, knowing that the production of  
such visual depiction involved a minor engaging in sexually explicit conduct and that such visual  
depiction was of such conduct, in violation of Title 18, United States Code, Section 2252(a)(2).

INDICTMENT

COUNT TWO: (18 U.S.C. § 2252(a)(4)(B) - Possession of Child Pornography)

On or about August 8, 2007, in the Northern District of California, the defendant,  
TIMOTHY CRAIG,  
did knowingly possess at least one matter, namely a Toshiba laptop computer, which contained at  
least one visual depiction that had been shipped and transported in interstate and foreign  
commerce, by computer, knowing that the production of such visual depiction involved a minor  
engaging in sexually explicit conduct and that such visual depiction was of such conduct, in  
violation of Title 18, United States Code, Section 2252(a)(4)(B).

FORFEITURE ALLEGATIONS: (18 U.S.C. §§ 2253(a)(1) and (a)(3) - Criminal Forfeiture)

Upon conviction of the offenses alleged in Counts One and Two, the defendant,  
TIMOTHY CRAIG,  
shall forfeit to the United States, pursuant to Title 18, United States Code, Sections 2253(a)(1)  
and (a)(3), all visual depictions described in Title 18, United States Code Section 2252, and all  
property, real or personal, used or intended to be used to commit or promote the commission of  
the offenses of conviction, including but not limited to the following item that was obtained

//

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//

1 from defendant on August 8, 2007:

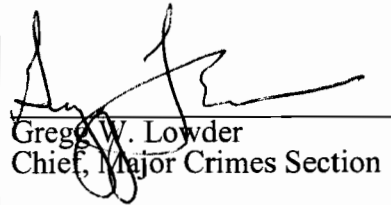
2 a. Toshiba Laptop Computer, Serial Number X6104930Q

6 DATED: May 15, 2008

A TRUE BILL.

7  
8   
9 FOREPERSON

10 JOSEPH P. RUSSONIELLO  
11 United States Attorney

12   
13 Gregg W. Lowder  
14 Chief, Major Crimes Section

15 (Approved as to form:   
16 AUSA Barton



# EXHIBIT B



# EXHIBIT C

BARRY J. PORTMAN  
Federal Public Defender  
STEVEN G. KALAR  
Assistant Federal Public Defender  
450 Golden Gate Avenue  
San Francisco, CA 94102  
Telephone: (415) 436-7700

Counsel for Defendant Craig

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	)	No. CR 08-0329 JSW
	)	
Plaintiff,	)	DECLARATION OF
	)	MELISSA FRINK
v.	)	
	)	<b>Hearing Date:</b> Thursday,
TIMOTHY CRAIG,	)	September 25, 2008 at 2:30
	)	p.m.
Defendant.	)	
<hr/>		

I, Melissa Frink, declare the following to be true under the penalty of perjury:

1. I am and investigator employed by the Office of the Federal Public Defender, Northern District of California;
2. I have been employed as an investigator by this office for twenty years;
3. I have been assigned as the investigator to the above-entitled case;
4. On March 12, 2008, I went to the clerk's office for the Napa County Superior Court in Napa, California;
5. I spoke to the clerk, and requested a copy of all court materials relating to the August 7, 2007 search warrant of 3271 Beard Road, Napa California, and a copy of all court materials relating to the CR 110080 (Timothy Craig) file;
6. The clerk turned to a computer and printed out documents. She then stamped these

1 printed documents with a purple court seal to certify them;

2 7. The documents found at Attachment 1 are the original court-certified documents  
3 provided to me by the Superior Court of California, County of Napa clerk;

4 8. On July 1, 2008, I returned to the clerk's office of the Superior Court of California,  
5 County of Napa;

6 9. On July 1, 2008, I spoke to a different clerk, and requested a copy of all court  
7 materials relating to the August 7, 2007 search warrant of 3271 Beard Road, Napa  
8 California;

9 10. The clerk retrieved a hard-copy folder and copied the contents within. The  
10 documents found at Attachment 2 are the materials provided to me by the Napa  
11 County court clerk on the July 1, 2008 visit.

12 7.29.08

13 DATED

14 

15 MELISSA FRINK

Superior Court of California  
County of Napa

THE WITHIN INSTRUMENTS ARE A TRUE AND CORRECT  
COPY OF THE ORIGINALS IN THIS OFFICE

ATTEST: \_\_\_\_\_

3/12/08

STEPHEN A. BOUCH  
COURT EXECUTIVE OFFICER  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF NAPA

BY: \_\_\_\_\_

DEPUTY COURT EXECUTIVE OFFICER



UNLESS ACCOMPANIED BY A PURPLE COURT SEAL  
CERTIFICATION IS VOID

**FILED**

JUL 26 2002

Clerk of the Napa Superior Court  
By: [Signature]  
Deputy

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF NAPA**

THE PEOPLE OF THE STATE OF CALIFORNIA,  
Plaintiff,

vs.

TIMOTHY CHARLES CRAIG

Defendant.

NSC NUMBER:

CR10080

NDA NUMBER:

198602021-03

**CRIMINAL COMPLAINT**

The undersigned is informed and believes that:

**COUNT ONE**

**POSSESSION OR CONTROL OF CHILD PORNOGRAPHY  
PC311.11(a)  
MISDEMEANOR**

On or about January 30, 2002 in the County of Napa, State of California, the crime of POSSESSION OR CONTROL OF CHILD PORNOGRAPHY in violation of section 311.11(a) of the Penal Code, a Misdemeanor, was committed by TIMOTHY CHARLES CRAIG, who did unlawfully and knowingly possess and control matter depicting a person under the age of 18 years personally engaging in and simulating sexual conduct as defined in Penal Code Section 311.4(d).

**COUNT TWO**

**POSSESSION OR CONTROL OF CHILD PORNOGRAPHY  
PC311.11(a)  
MISDEMEANOR**



1 On or about January 30, 2002 in the County of Napa, State of California, the crime of  
2 POSSESSION OR CONTROL OF CHILD PORNOGRAPHY in violation of section 311.11(a) of  
3 the Penal Code, a Misdemeanor, was committed by TIMOTHY CHARLES CRAIG, who did  
4 unlawfully and knowingly possess and control matter depicting a person under the age of 18  
5 years personally engaging in and simulating sexual conduct as defined in Penal Code Section  
6 311.4(d).  
7

8  
9 **COUNT THREE**

10 POSSESSION OR CONTROL OF CHILD PORNOGRAPHY

11 PC311.11(a)

12 MISDEMEANOR  
13

14 On or about January 30, 2002 in the County of Napa, State of California, the crime of  
15 POSSESSION OR CONTROL OF CHILD PORNOGRAPHY in violation of section 311.11(a) of  
16 the Penal Code, a Misdemeanor, was committed by TIMOTHY CHARLES CRAIG, who did  
17 unlawfully and knowingly possess and control matter depicting a person under the age of 18  
18 years personally engaging in and simulating sexual conduct as defined in Penal Code Section  
19 311.4(d).  
20

21 **COUNT FOUR**

22 POSSESSION OR CONTROL OF CHILD PORNOGRAPHY

23 PC311.11(a)

24 MISDEMEANOR  
25

26 On or about January 30, 2002 in the County of Napa, State of California, the crime of  
27 POSSESSION OR CONTROL OF CHILD PORNOGRAPHY in violation of section 311.11(a) of  
28 the Penal Code, a Misdemeanor, was committed by TIMOTHY CHARLES CRAIG, who did  
29 unlawfully and knowingly possess and control matter depicting a person under the age of 18  
30 years personally engaging in and simulating sexual conduct as defined in Penal Code Section  
31 311.4(d).  
32

33 **COUNT FIVE**

34 POSSESSION OR CONTROL OF CHILD PORNOGRAPHY

35 PC311.11(a)

36 MISDEMEANOR  
37

38 On or about January 30, 2002 in the County of Napa, State of California, the crime of  
39 POSSESSION OR CONTROL OF CHILD PORNOGRAPHY in violation of section 311.11(a) of  
40 the Penal Code, a Misdemeanor, was committed by TIMOTHY CHARLES CRAIG, who did

1 unlawfully and knowingly possess and control matter depicting a person under the age of 18  
2 years personally engaging in and simulating sexual conduct as defined in Penal Code Section  
3 311.4(d).

4  
5 **COUNT SIX**

6 **POSSESSION OR CONTROL OF CHILD PORNOGRAPHY**

7 **PC311.11(a)**

8 **MISDEMEANOR**

9  
10 On or about January 30, 2002 in the County of Napa, State of California, the crime of  
11 **POSSESSION OR CONTROL OF CHILD PORNOGRAPHY** in violation of section 311.11(a) of  
12 the Penal Code, a Misdemeanor, was committed by TIMOTHY CHARLES CRAIG, who did  
13 unlawfully and knowingly possess and control matter depicting a person under the age of 18  
14 years personally engaging in and simulating sexual conduct as defined in Penal Code Section  
15 311.4(d).

16  
17 **COUNT SEVEN**

18 **POSSESSION OR CONTROL OF CHILD PORNOGRAPHY**

19 **PC311.11(a)**

20 **MISDEMEANOR**

21  
22 On or about January 30, 2002 in the County of Napa, State of California, the crime of  
23 **POSSESSION OR CONTROL OF CHILD PORNOGRAPHY** in violation of section 311.11(a) of  
24 the Penal Code, a Misdemeanor, was committed by TIMOTHY CHARLES CRAIG, who did  
25 unlawfully and knowingly possess and control matter depicting a person under the age of 18  
26 years personally engaging in and simulating sexual conduct as defined in Penal Code Section  
27 311.4(d).

28  
29 **COUNT EIGHT**

30 **POSSESSION OR CONTROL OF CHILD PORNOGRAPHY**

31 **PC311.11(a)**

32 **MISDEMEANOR**

33  
34 On or about January 30, 2002 in the County of Napa, State of California, the crime of  
35 **POSSESSION OR CONTROL OF CHILD PORNOGRAPHY** in violation of section 311.11(a) of  
36 the Penal Code, a Misdemeanor, was committed by TIMOTHY CHARLES CRAIG, who did  
37 unlawfully and knowingly possess and control matter depicting a person under the age of 18  
38 years personally engaging in and simulating sexual conduct as defined in Penal Code Section  
39 311.4(d).

**COUNT NINE**

**POSSESSION OR CONTROL OF CHILD PORNOGRAPHY**

**PC311.11(a)**

**MISDEMEANOR**

On or about January 30, 2002 in the County of Napa, State of California, the crime of POSSESSION OR CONTROL OF CHILD PORNOGRAPHY in violation of section 311.11(a) of the Penal Code, a Misdemeanor, was committed by TIMOTHY CHARLES CRAIG, who did unlawfully and knowingly possess and control matter depicting a person under the age of 18 years personally engaging in and simulating sexual conduct as defined in Penal Code Section 311.4(d).

**COUNT TEN**

**POSSESSION OR CONTROL OF CHILD PORNOGRAPHY**

**PC311.11(a)**

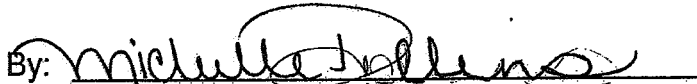
**MISDEMEANOR**

On or about January 30, 2002 in the County of Napa, State of California, the crime of POSSESSION OR CONTROL OF CHILD PORNOGRAPHY in violation of section 311.11(a) of the Penal Code, a Misdemeanor, was committed by TIMOTHY CHARLES CRAIG, who did unlawfully and knowingly possess and control matter depicting a person under the age of 18 years personally engaging in and simulating sexual conduct as defined in Penal Code Section 311.4(d).

Complainant therefore prays that a warrant be issued and that said defendant(s) be dealt with according to law. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: July 25, 2002

GARY LIEBERSTEIN  
DISTRICT ATTORNEY

By: 

Michelle Rollins

Deputy District Attorney

mr

**NOTICE**

PLEASE TAKE NOTICE THAT COUNSEL FOR THE PEOPLE HEREBY MAKE  
AN INFORMAL DEMAND FOR DISCOVERY (PURSUANT TO PC 1054.3)  
WITHIN FIFTEEN DAYS

**SUMMARY OF CHARGES AND PUNISHMENT**  
**TIMOTHY CHARLES CRAIG**  
**( DOB : 09/03/1958 )**

COUNT	CHARGE	PUNISHMENT	EFFECT
ONE	PC311.11(a)	1 Yr.	
TWO	PC311.11(a)	1 Yr.	
THREE	PC311.11(a)	1 Yr.	
FOUR	PC311.11(a)	1 Yr.	
FIVE	PC311.11(a)	1 Yr.	
SIX	PC311.11(a)	1 Yr.	
SEVEN	PC311.11(a)	1 Yr.	
EIGHT	PC311.11(a)	1 Yr.	
NINE	PC311.11(a)	1 Yr.	
TEN	PC311.11(a)	1 Yr.	

DA ADT (REV 11/95) Arrest/Detention/Complaint Form

Page 1 of 1

ARRESTING AGENCY Napa Police Dept.		NCIC # CA028		<b>NAPA COUNTY CRIMINAL JUSTICE SYSTEM ARREST/DETENTION/COMPLAINT FORM</b>		AGENCY CASE # 02-0494		PID #	
TYPE OF ARREST <input type="checkbox"/> ON VIEW <input type="checkbox"/> CITIZEN'S ARREST <input type="checkbox"/> WARRANT ARREST		X ADULT <input type="checkbox"/> JUVENILE		X REQUEST FOR COMPLAINT & WARRANT (NOT IN CUSTODY)		<input type="checkbox"/> DETENTION ONLY RELEASED, PC 849(b) CII # A12405256		<input type="checkbox"/> DOMESTIC VIOLENCE <input type="checkbox"/> WEAPONS USED <input type="checkbox"/> NARCOTICS OFFENSE	
DATE OF OFFENSE 04/24/02				DL# N4589759		STATE CA		DOB 9/3/58	
SUSPECT NAME (FIRST, MIDDLE, LAST) Timothy Craig				BUSINESS/SCHOOL NAME		HT 6'4		SEX M	
HOME ADDRESS (STREET, CITY, COUNTY, STATE, ZIP) 4095 FAIRFAX, NAPA				BUSINESS/SCHOOL ADDRESS		HAIR Blk		EYES Brn	
HOME PHONE ( ) -		YEAR		COLOR		SUSPECT'S CAR TYPE		STYLE	
WORK PHONE ( ) -		MAKE		MODEL		LICENSE #		STATE	
NAME (PARENT/GUARDIAN, IF JUVENILE)		RELATIONSHIP		EMERGENCY NOTIFICATION (MUST BE COMPLETED IF JUVENILE)		NOTIFIED BY		DATE	
ADDRESS						TIME 23:59		DATE/TIME OF ARREST /23:59	
LOCATION OF ARREST		ARRESTING OFFICER		TRANSPORTING OFFICER		RECEIVING OFFICER		<input type="checkbox"/> JAIL <input type="checkbox"/> JUV HALL	
<b>CHARGES</b>									
CODE	SECTION	OFFENSE DESCRIPTION				WARRANT/EVENT #	COURT	BAIL AMT	F/M/I
PC	311.11	Poss of Child Pornography					Napa County		M
WARRANT CHECK <input type="checkbox"/> LOCAL <input type="checkbox"/> DMV <input type="checkbox"/> DOJ/NCIC									
HOLDS? <input type="checkbox"/> YES <input type="checkbox"/> NO									
CONFIRMED BY									
<b>CUSTODY/ALERT</b>									
<input type="checkbox"/> PROTECTIVE CUSTODY <input type="checkbox"/> ASSAULT/COMBATIVE <input type="checkbox"/> KEEP SEPARATE FROM (NAME):									
<input type="checkbox"/> ESCAPE RISK <input type="checkbox"/> SUICIDE RISK <input type="checkbox"/> MEDICAL RISK (EXPLAIN):									
EVIDENCE/COMPLAINT OF ILLNESS/INJURY: <input type="checkbox"/> YES <input type="checkbox"/> NO TREATED BY: DATE/TIME: /12:00									
<b>BOOKING AUTHORITY</b>									
<input type="checkbox"/> FELONY ARREST MISDEMEANOR ARRESTS - CHECK ONE OR MORE BELOW PC853.6 CITATION RELEASE EXCEPTIONS <input type="checkbox"/> Intoxicated state may result in danger to self or others <input type="checkbox"/> Arrestee required medical exam or care or could not care for own safety <input type="checkbox"/> The immediate release would jeopardize prosecution <input type="checkbox"/> Arrested for one or more offenses listed under VC40302/40303 <input type="checkbox"/> Demanded immediate appearance or refused to sign written promise to appear <input type="checkbox"/> Imminent danger to safety of other persons or property PC674(g) EXCEPTIONS <input type="checkbox"/> Under the influence of any drug or under the combined influence of any drug and alcohol <input type="checkbox"/> Probable cause to believe arrestee has committed a felony, or misdemeanor other than PC647(f) <input type="checkbox"/> Good faith belief arrestee will attempt escape or is unreasonably difficult for medical personnel to control									
<input type="checkbox"/> Arrested for VC23152(a) or VC23152(b) <input type="checkbox"/> There are additional outstanding arrest warrants <input type="checkbox"/> Arrestee had no personal identification <input type="checkbox"/> Release would increase likelihood of offense continuing <input type="checkbox"/> VIC626 <input type="checkbox"/> Reason to believe arrestee would fail to appear (state reason):									
COPIES TO: X DA <input type="checkbox"/> ADULT PROBATION <input type="checkbox"/> JUVENILE PROBATION <input type="checkbox"/> NSIB <input type="checkbox"/> DETECTIVES <input type="checkbox"/> STATE PAROLE <input type="checkbox"/> CYA <input type="checkbox"/> ADMINISTRATION <input type="checkbox"/> OTHER									
<b>NARRATIVE</b>									
<input type="checkbox"/> CONTINUATION PAGE ATTACHED									
DESCRIBE PROBABLE CAUSE FOR ARREST/DETENTION OR CIRCUMSTANCES LEADING TO WARRANT ARREST (DO NOT USE CONTINUATION PAGE UNLESS ABSOLUTELY NECESSARY)									
A search warrant was served upon Timothy Craig's 4095 Fairfax residence. Child pornography in violation of 311.11 (a) P.C. was found.									
<input type="checkbox"/> CITIZEN'S ARREST - I HEREBY ARREST THE ABOVE PERSON AND DEMAND HE/SHE BE TAKEN INTO CUSTODY									
ARRESTING CITIZEN'S SIGNATURE:					ARRESTING CITIZEN'S NAME (Print)				
DATE:					DATE: 4/24/02				
I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA, AND UPON INFORMATION AND BELIEF, THAT THE FOREGOING IS TRUE AND CORRECT.									
OFFICER'S SIGNATURE: <i>R. Appel</i>					OFFICER'S NAME (Print): R. Appel				
REVIEWED BY (Signature):					REVIEWED BY (Print Name):				
DATE:					DATE:				



<b>NAPA SUPERIOR COURT</b>		<b>FILED</b>  AUG 22 2002  Clerk of the Napa Superior Court By: <u><i>D. Medina</i></u> Deputy
Plaintiff	THE PEOPLE OF THE STATE OF CALIFORNIA	
Defendant	<u>Craig, Timothy</u>	
Case Number	<u>CR 110080</u>	
<b>OWN RECOGNIZANCE &amp; BAIL AGREEMENT</b>		

### INSTRUCTIONS

Read this form, and then **sign and date the form on page 2**. If you have any questions about your case, or the information on this form, ask your attorney or the judge.

### MANDATORY CONDITIONS FOR "OR" RELEASE

1. I promise to appear at all times and places as ordered by any Court before whom this case is pending.
2. I promise not to leave this state without permission of this Court.
3. I agree to waive extradition if I fail to appear as required and am apprehended outside the State of California.
4. I understand that a violation of any condition of my release on my own recognizance will result in the revocation of my release agreement and the issuance of a bench warrant for my arrest.
5. I understand that if I willfully fail to appear as ordered, then I can be charged with a new crime. If I am charged with a misdemeanor, the maximum punishment for the new crime is 6 months in jail plus a \$1000 fine (plus penalty assessments). If I am charged with a felony, the maximum punishment for the new crime is 3 years in state prison and a \$5000 fine (plus penalty assessments).
6. I promise to obey all laws.

### OTHER CONDITIONS ☐ FOR BAIL ☐ FOR "OR"

7. ☐ I promise to report to the Napa Probation Department by \_\_\_\_\_ and follow any reasonable orders of the Probation Officer.
8. ☐ I promise not to consume or possess alcoholic beverages.
9. ☐ I promise not to consume or possess any illegal drugs.
10. ☐ I promise not to drive a motor vehicle.
11. ☐ I promise not to own or possess any knives, firearms, or weapons of any kind.
12. ☐ I agree to submit to chemical testing of my blood, breath, or urine, at any time of the day or night, by any probation officer or law enforcement officer (or NCDC staff if I am on Electronic OR), with or without a warrant or probable cause.
13. ☐ I agree to submit to a search and seizure of my person, property, vehicle, and residence at any time of the day or night, by any probation officer or law enforcement officer (or NCDC staff if I am on Electronic OR), with or without a warrant or probable cause.
14. ☐ I agree to attend Anger Management Counseling and enroll by: \_\_\_\_\_  
☐ I agree to provide written proof of attendance by: \_\_\_\_\_
15. ☐ I agree to attend AA at least \_\_\_\_\_ times each week.  
☐ I agree to provide written proof of attendance by: \_\_\_\_\_
16. ☐ I agree to attend NA at least \_\_\_\_\_ times each week.  
☐ I agree to provide written proof of attendance by: \_\_\_\_\_

17. ☐ I promise not to contact the following people by any means, either directly or indirectly, and to remain at least 100 yards away from them, and the following places:

\_\_\_\_\_

18. ☐ I promise not to annoy, molest, strike, threaten, harass, sexually abuse, batter, stalk, or disturb the peace of: \_\_\_\_\_

19. ☐ I promise to obey all the following orders imposed by the Court as a condition of my release:

\_\_\_\_\_

### OTHER CONDITIONS FOR NCDC ELECTRONIC "OR" PROGRAM

20. ☐ I agree to follow all the rules of the NCDC Electronic Supervised OR Program. I will keep NCDC informed of my schedule, any changes to my schedule, and provide proof as requested. I understand that NCDC has the authority to return me to custody and set bail pursuant to the uniform bail schedule if it appears that I have violated any rule or condition of this OR Agreement. I will report to NCDC whenever requested by NCDC staff. I understand I may be charged a fee for this program.
21. ☐ I agree to remain in my home at all times, except as authorized, in advance, by NCDC staff. If requested, authorization will be given for the following types of events: court hearings, probation officer appointments, attorney appointments, necessary medical appointments, court-ordered programs, and:

\_\_\_\_\_  
Employer & Work Schedule

\_\_\_\_\_  
School & School Schedule

\_\_\_\_\_  
Other

I have read this form and I understand each paragraph I have initialed.

DEFENDANT'S SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

4095 FAIRFAX DR. NAPA 94558  
Home Address

255-3495  
Home Phone

### INTERPRETER'S STATEMENT

I, having been sworn, or having a written oath on file, certify that I truly translated this form, and any attachments, to the defendant in the language indicated below. The defendant stated that (s)he understood the contents of the form, and then (s)he initialed and signed the form.

Language: ☐ Spanish ☐ Other (specify) \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

COPY TO: ☐ DEF ☐ DA ☐ PROB ☐ JAIL ☐ DEF ATTY ☐ DDP ☐ NSO ☐ PCS ☐ CSB ☐ \_\_\_\_\_



SUPERIOR COURT OF CALIFORNIA  
COUNTY OF NAPA

Plaintiff

COURT NO. CR

vs.

DISCLOSURE

*Tim Craig*  
Defendant(s)

You are about to appear in front of Commissioner Kelly Boyd. Commissioner Boyd is married to a prosecutor in the Napa County District Attorney's Office.

*Tim Craig*  
DEFENDANT

*[Signature]*  
COUNSEL FOR DEFENDANT




**American Contractors  
Indemnity Company**

 9841 Airport Blvd., 9th Floor  
 Los Angeles, CA 90045  
 (310) 649-2663

**ALDRIDGE BAIL BONDS**

 P.O. Box 517  
 Napa, CA 94559

**BAIL BOND No. A30-2035039**  
 (POWER OF ATTORNEY WITH THIS NUMBER MUST BE ATTACHED.)

 IN THE Superior COURT OF THE NAPA JUDICIAL DISTRICT  
 COUNTY OF NAPA, STATE OF CALIFORNIA  
 THE PEOPLE OF THE STATE OF CALIFORNIA

Plaintiff,

Case No. CR-110080

vs.

Div. No. \_\_\_\_\_

Timothy Charles CRAIG  
 Defendant.

 Defendant Timothy Charles CRAIG  
 (Name of Defendant)

198602021-03  
 Booking No.

 having been admitted to bail in the sum of Twenty Five THOUSAND  
 Dollars (\$ 25,000- ) and ordered to appear in the above-entitled court  
 on 7/7 830 AM 20 03, on 311.11 (a) PC, 978.5 PC charge/s:  
 (Date of Appearance) (State "misdemeanor" or "felony")

Now the AMERICAN CONTRACTORS INDEMNITY COMPANY, a California corporation, hereby undertakes that the above-named defendant will appear in the above-named court on the date above set forth to answer any charge in any accusatory pleading based upon the acts supporting the complaint filed against him/her and all duly authorized amendments thereof, in whatever court it may be prosecuted, and will at all times hold him/herself amenable to the orders and process of the court, and, if convicted, will appear for pronouncement of judgment or grant of probation; or, if he/she fails to perform either of these conditions, that the AMERICAN CONTRACTORS INDEMNITY COMPANY, a California corporation, will pay to the people of the State of California, the sum of Twenty Five THOUSAND

Dollars (\$ 25,000- ).

If the forfeiture of this bond be ordered by the Court, judgement may be summarily made and entered forthwith against the said AMERICAN CONTRACTORS INDEMNITY COMPANY, a California Corporation, for the amount of its undertaking herein, as provided by Sections 1305 and 1306 of the California Penal Code.

THIS BOND IS VOID IF WRITTEN FOR AN AMOUNT GREATER THAN THE POWER OF ATTORNEY ATTACHED HERETO. IF MORE THAN ONE SUCH POWER IS ATTACHED, OR IF WRITTEN AFTER THE EXPIRATION DATE SPECIFIED ON THE ATTACHED POWER OF ATTORNEY.

**AMERICAN CONTRACTORS  
INDEMNITY COMPANY**

By

Scott D. Schuch  
 Attorney-in-Fact

 I certify under penalty of perjury that I am a licensed bail Agent of the AMERICAN CONTRACTORS INDEMNITY COMPANY and that I am executing this bond on June 10 2003 (date)

 at NAPA JAIL (location)

Stephen Schl  
 (signature of licensed agent)

The Premium Charged for this Bond is

 \$ 2515- Per Annum.

 Approved this 10th day of June, 2002  
E. R. Wasden  
 Title

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF NAPA SUPERIOR COURT  
PROMISE TO APPEAR/CSB REFERRAL**

**FILED**

Name Timothy Craig Ct 1 \_\_\_\_\_ Ct 2 JUL 22 2003  
Case # CR 110080 Ct 3 \_\_\_\_\_ Ct 4 \_\_\_\_\_  
Clerk of the Napa Superior Court  
By: O. Medina  
Deputy

**For Court Use only/Distribution of fine by account type**

<b>VICTIM RESTITUTION</b>	\$
Victim Name:	
Address:	Phone Number:
	<input type="checkbox"/> To be determined
<b>AIDS Education PC1463.23 AIDS</b>	\$
<b>State Restitution PC1202.4(b) Misdemeanor Min. \$100 CRRF51</b>	\$
<b>State Restitution PC1202.4(b) Felony Min \$200 CRRF51</b>	\$
<b>Domestic Violence Fund PC1203.097(e)/1203.097(a)(5) DVFUND</b>	\$
<b>Napa Emergency Women's Shelter PC1203.097(f)/1203.097a(11)a NEWS</b>	\$
<b>Diversion Fee PC1001.90 DIVFEE</b>	\$
<b>Drug Program Fee HS11372.7 DPFE</b>	\$
<b>Crim Lab Fees HS 11372.5 CRMLAB</b>	\$
<b>Booking Fee</b>	\$
<b>Fine</b>	\$ <u>1500.00</u>
<b>Indigent Defense Fee PDFEEs</b>	\$
<b>Admin Fee</b>	\$ <u>35.00</u>
<b>TOTAL</b>	\$ <u>1535.00</u>

The undersigned, being the defendant in the above entitled matter, hereby promises and agrees to the above listed amount and the following:

To appear at the **California Services Bureau (707) 251-0724** located at 1111 Third Street Room 100, Napa, **immediately or no later than 4PM the next business day** to complete any and all required financial forms; provide current financial information; and furnish written verification of my financial status for the purpose of establishing an installment payment plan. I further understand that if I fail to contact CSB as ordered, or complete all required forms, a civil assessment/warrant fee totaling \$250 will be imposed against me pursuant to penal Code Section 1214.1 or Penal Code section 853.7 for failure to pay in addition to the fine as ordered by the court. Your privilege to drive may also be suspended pursuant to Vehicle Code section 40509.5.

Date: 7-23-03

Signature: Timothy Craig

Address: 4095 FAIRFAX DR.

City: NAPA

State: CA

Zip: 94558

Telephone: 707-255-3495

White: Court Yellow: Defendant

Pink: CSB

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF NAPA  
MINUTE ORDER**

**Case:** People vs. Craig, Timothy Charles (M)  
**Judge:** Richard A. Bennett  
**Courtroom:** Department E  
**Event:** Hearing: Plea/Setting  
**PID # :** 198602021-03

**Case #** CR110080  
**Event Date:** July 23, 2003  
**Clerk:** V. Kollin  
**Reporter:** Benita Duncan  
**Cite/Report #:** 02-0494

**Appearances:**

L. Hafenstein, Deputy District Attorney  
T. Gil, Attorney for Defendant  
Defendant present

**PLEA**

- ☒ Counsel provides the Court with a Plea form at this time.
- ☒ Defendant enters a plea of :
- |  | <b>Count</b> | <b>Section Violated</b>     |
|--|--------------|-----------------------------|
| <input checked="" type="checkbox"/> No Contest                     | 1            | PC 311.11(a) (Peo. v. West) |
| <input checked="" type="checkbox"/> As set forth in the Plea Form. |              |                             |
| <input checked="" type="checkbox"/> with concurrence of counsel    |              |                             |
- ☒ Court finds that defendant's plea was freely and voluntarily entered; there was a factual basis for said plea; and that the defendant made an intelligent waiver of his/her trial rights.
- ☒ Counts: 2 -10 are dismissed upon motion of the District Attorney

**SENTENCING**

- ☒ Probation is ordered      ☒ Denied
- ☒ **Fine**  
☒ Defendant to pay a fine in the amount of \$1, 500. 00.
- ☒ Defendant ordered to report to Post Court Services
- Bail Bond exonerated.

**NAPA SUPERIOR COURT****PLEA FORM**

Defendant

Tim CRAIG

Case Number

CR110080

**INSTRUCTIONS**

Fill out this form if you wish to plead guilty or no contest (or admit a violation of probation). **Initial the box for each item that applies to you**, but only if you understand it, and **sign and date the form on page 3**. If you have any questions about your case, the possible sentence, or the information on this form, ask your attorney or the judge.

**YOU MUST READ AND INITIAL SECTIONS 1 AND 2**

1. **Right To A Trial** - I understand that I have the right to a speedy, public jury trial or court trial. At a trial, I would be presumed innocent, and I could not be convicted unless 12 impartial jurors (or the judge at a court trial) were convinced of my guilt beyond a reasonable doubt. (For a probation violation, I understand that I have a right to a hearing in front of a judge who would decide if I violated conditions of my probation.) I give up my right to a jury trial and my right to a court trial (or probation hearing).

**Right To Confront And Cross-Examine Witnesses** - I understand that I have a right to see and hear all witnesses who may testify against me at the trial. I understand that I have a right to ask them questions during the trial. I give up my right to confront and cross-examine witnesses.

**Right To Produce Evidence** - I understand that I have a right to present evidence, to testify in my own behalf, and to have the Court issue subpoenas to bring into court all witnesses and evidence favorable to me, at no cost to me. I give up my right to produce evidence.

**Right To Remain Silent** - I understand that I have a right to remain silent and not incriminate myself. I understand that by pleading guilty or no contest I am incriminating myself. I give up my right to remain silent.

**Penalty For Charges I Am Pleading Guilty Or No Contest To (Or Admitting A Violation Of Probation To)** - I understand the possible consequences of my plea(s) include the following: WEST PLEA

• <u>CT 1</u>	<u>PC 311.11(a)</u>	<u>6mo CT.</u>	<u>1K (MISD.)</u>
Count No.	Charge (code & section no.)	Minimum Penalty (jail & fine)	Maximum Penalty (jail & fine)

## Other consequences

• _____	_____	_____	_____
Count No.	Charge (code & section no.)	Minimum Penalty (jail & fine)	Maximum Penalty (jail & fine)

## Other consequences

• _____	_____	_____	_____
Count No.	Charge (code & section no.)	Minimum Penalty (jail & fine)	Maximum Penalty (jail & fine)

## Other consequences

• _____	_____	_____	_____
Count No.	Charge (code & section no.)	Minimum Penalty (jail & fine)	Maximum Penalty (jail & fine)

## Other consequences

• _____	_____	_____	_____
Count No.	Charge (code & section no.)	Minimum Penalty (jail & fine)	Maximum Penalty (jail & fine)

## Other consequences

I understand that a 170% penalty assessment will be added to any penalty fine.

I understand that a plea of guilty or no contest (or an admission to a violation of probation) may be grounds for violating probation or parole which has been previously granted to me in any other case.

I understand that, if I am not a United States citizen, a plea of guilty or no contest could result in my deportation, exclusion from admission to this country, or denial of naturalization.

INITIALS

1. 2C.



2. I understand that I may be ordered to pay restitution to the victim(s), if any.  
 I understand that I will be ordered to pay a restitution fine. The fine is \$100 to \$1000 for one or more misdemeanors and \$200 to \$10,000 for one or more felonies (if I am sent to prison, I will pay an additional, identical restitution fine which will be suspended unless parole is revoked).  
 I stipulate there is a factual basis for my plea(s).  
 I understand that a plea of no contest has exactly the same effect in this case as a plea of guilty, but it cannot be used against me in a civil lawsuit unless the offense is a felony.  
 I understand the nature of the charge(s) against me and the possible pleas and defenses.  
 No one has used any threats, force, violence, duress or undue influence of any kind on me, or anyone close to me, in order to get me to plead guilty or no contest.  
 I declare I am of sound mind and I am not under the influence of alcohol, drugs, or medication of any kind.  
 I hereby freely and voluntarily (circle one)

PLEAD GUILTY

PLEAD NO CONTEST

ADMIT A VIOLATION OF PROBATION

to the charges listed in section(s) 1 (and 10).

INITIALS

2.

J.C.

## INITIAL SECTIONS 3 THROUGH 16 ONLY IF THEY APPLY TO YOUR CASE

3. **Plea Bargain** - The following promises have been made to me as a condition of my plea(s). No other promises have been made. I understand that if the Court refuses to follow this plea bargain then I will be allowed to withdraw my plea(s) of guilty or no contest and enter a not guilty plea.

a) NO PROBATION, NO JAIL

b) FINE ONLY

c) DISMISS CT# 2-10

d) " CR 108182

e) CONTINGENT ON NO PAROLE REVOCATION

3.

J.C.

4. **Harvey Waiver** - I understand that ordinarily dismissed charges cannot be considered by the Court in deciding punishment for this case, or in ordering victim restitution. I agree the Court can consider the following dismissed charges when I am sentenced in this case and may order restitution for them:

List Counts and/or Cases Dismissed

5. **Right To A Preliminary Hearing** - I understand that I have a right to a preliminary hearing if I am charged with a felony.

I give up my right to a preliminary hearing.

6. **Parole Period** - I understand that if I am sent to state prison I will be placed on parole when released. The maximum parole period is for the remainder of my life if I am sentenced to a life term for first or second degree murder. The maximum parole period is five years if I am sentenced to a life term for any other offense, or if I am sentenced for PC261(a)(2), PC261(a)(6), PC262(a)(1), PC262(a)(4), PC286(c)(2), PC288a(c)(2), PC288, PC288.5, or PC264.1. The maximum parole period is ten years if I am sentenced to a life term under PC667.61. The maximum parole period is three years in all other cases.

7. **Mandatory Registration** - I understand that I will be required to register as a (circle one)

✓ sex offender

drug offender

arson offender

with the police or sheriff of any city or county where I live.

8. **Presumptive State Prison** - I understand that I will not be eligible for probation unless the Court finds my case involves unusual circumstances.

9. **Mandatory State Prison** - I understand that I will not be eligible for probation.

10. **Attachment One (Additional Charges)** lists additional charges I am pleading guilty or no contest to.

11. **Attachment Two (Dui Offenses)** contains additional consequences.

12. **Attachment Three (Suspended License)** contains additional consequences.

13. **Attachment Four (Deferred Entry Of Judgment)** contains additional consequences.

4.

5.

6.

7.

8.

9.

10.

11.

12.

13.

INITIALS
14.
15.
16.

14. **Arbuckle Waiver** - I understand that I may have a right to be sentenced by the judge who accepts my plea(s). I give up that right and agree to be sentenced by another judge.
15. **Temporary Judge** - I understand that I have the right to enter my plea(s) before, and to be sentenced by, a judge. I give up this right and agree to enter my plea(s) before, and be sentenced by:

\_\_\_\_\_  
Temporary Judge's Name

16. **Right To An Attorney** - I understand that I have the right to be represented by an attorney in this case. I understand that the Court will appoint a free attorney for me if I cannot afford to hire one, but, at the end of the case, I may be asked to pay all or part of the cost of that attorney, if I can afford to. I understand that there are dangers and disadvantages to giving up my right to an attorney, and that it is almost always unwise to represent myself.
- I give up my right to an attorney, and I choose to represent myself.

DEFENDANT'S SIGNATURE: \_\_\_\_\_

DATE: 7-23-03

#### ATTORNEY'S STATEMENT

I am the attorney of record for the defendant. I have gone over this form, and any attachments, with my client. I have explained each of the defendant's rights to the defendant and answered all of the defendant's questions about this form and the plea(s). I have discussed the facts of the case with the defendant and have explained the nature of the charges, the elements of the offense(s), any possible defenses, and the consequences of the plea(s). I join in the waivers, stipulate there is a factual basis, and consent to the plea(s).

SIGNATURE: \_\_\_\_\_

(Signature)

(Print Name)

DATE: 7-23-03

#### INTERPRETER'S STATEMENT

I, having been sworn, or having a written oath on file, certify that I truly translated this form, and any attachments, to the defendant in the language indicated below. The defendant stated that (s)he understood the contents of the form, and then (s)he initialed and signed the form.

Language: ☐ Spanish ☐ Other (specify) \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

#### PROSECUTOR'S STATEMENT

I am the prosecutor in this case. I have reviewed the information above and consent to the plea(s) being entered on the terms and conditions indicated. I stipulate there is a factual basis for the plea(s).

SIGNATURE: \_\_\_\_\_

DATE: 7/23/03

#### COURT'S FINDINGS AND ORDER

The Court, having reviewed this form, together with any attachments, and having questioned the defendant concerning his or her constitutional and statutory rights, finds that the defendant understands his or her rights and that the defendant expressly, knowingly, voluntarily, and intelligently waived those rights. The Court finds that the defendant understands the nature of the charges and the consequences of the plea(s) and admission(s). The Court finds the plea(s) and admission(s) have been made freely and voluntarily. The Court finds there is a factual basis for the plea(s) and admission(s). The Court accepts the plea(s) and admission(s) and orders this form filed and incorporated in the docket by reference as though fully set forth therein.

SIGNATURE: \_\_\_\_\_

DATE: 7/23/03



# EXHIBIT C -ATTACHMENT 1

## MODIFY Court Event [C CR110080] - July 15, 2003 at 8:30 am for Hearing: Plea/Setting in Courtroom Department E

File ID	CR110080
Caption	People vs. Craig, Timothy Charles (M)
PID Number	198602021-03
Sched Date	07-15-2003
Type	Hearing: Plea/Setting [412190]
Sched Time	08:30am
Sched Room	Department E [22E]
Judge/Official	Richard A. Bennett [J21110]
Estim Duration/Hours	0.05
Est. Days	
Hearing Information	
Interpreter Flag	
Interpreter	
Interpreter Status	
Result	Cont. Party's Motion-After Hrng. [421210]
Court Clerk	K. Koen [GLRK32]
Court Reporter	Cynthia Lomell [1CR6]
Defendant or Minor	Present
Memo	Atty: L. Hafenstein & T. Gill. Cont: 7/23/03 at 8:30 a.m. in Dept. E for Plea/Setting.

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF NAPA**  
**MINUTE ORDER**

**Case:** People vs. Craig, Timothy Charles (M)  
**Judge:** Kelly Boyd  
**Courtroom:** Department D  
**Event:** Return/Surrender on Warrant  
**PID # :** 198602021-03

**Case #** CR110080  
**Event Date:** July 7, 2003  
**Clerk:** D. Harry  
**Reporter:** Cynthia Lomeli  
**Cite/Report #:** 02-0494

**Appearances:**

T. Gill, Counsel for Defendant  
 Defendant IS present

The Court hears comments of Counsel with regard to Defendant's failure to appear for Trial Setting Conference.

**CONTINUANCES**

The Court, pursuant to request of the Defendant, orders this matter shall be continued as follows:

DATE	TIME	DEPT	PURPOSE	TIME/EST
7-15-03	8:30 a.m.	E	Plea/Setting	.05

Further orders: Defendant is continued at liberty on the bail bond previously posted.

-o0o-

SUPERIOR COURT FOR THE COUNTY OF NAPA

1111 Third Street/825 Brown Street

Napa, CA 94559

THE PEOPLE OF THE STATE OF CALIFORNIA	Plaintiff,
vs.	
Craig, Timothy	
4095 Fairfax	
Napa, CA 94558	Defendant.

Case No. CR110080

PID: 198602021-03

☒ Misdemeanor

☐ Felony

Sex	Hair	Eyes	HT.	WT.	Race
M	BRO	HAZ	604	230	W

DOB: 9/3/1958 Driver's License No: N4589759 CA

Violation Date: 1/30/02

THE PEOPLE OF THE STATE OF CALIFORNIA, TO ANY PEACE OFFICER OF THIS STATE:

The above named and described defendant was convicted in this court of the offense set forth above; or an order was issued; or an accusation was filed charging the defendant with the offense set forth and the above named defendant subsequently failed to obey the order of the court or other requirements of the law, to wit:

Charges

Status

PC311.11(A)

Charge Pending

- ☐ Released on Bail - FTA (979 PC)
- ☐ Signed Promise to Appear; Did Not Post Bail; Failed to Appear (40515 VC/853.6 PC)
- ☐ Violated Terms of Probation (1203.2 PC)
- ☐ Failed to Pay Fine (1205 PC)
- ☒ Released on Own Recognizance: Failed to Appear/ (978.5 PC)
- ☐ Failed to Comply with Court Order or Failed to Complete Work Program
- ☐ Failed to Appear for Judgment (1193/1195 PC)

You are ordered to arrest the defendant forthwith and bring him/her before me, or in the case of my absence or inability to act, before the nearest accessible magistrate in the county.

- ☒ Defendant is to be Admitted to Bail \$25,000.00.
- ☐ Bail May be Forfeited
- ☐ Defendant May be Released on Signed Promise to Appear (818/853.6 PC) If Initialed for Release \_\_\_\_\_
- ☐ This Misdemeanor Warrant May be Served at Night (840PC)
- ☐ Do Not Cite Release
- ☒ Mandatory Appearance Required

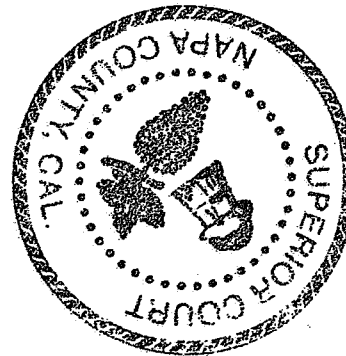
By: John Gleason  
Deputy Court Executive Officer

11/1/02  
Date

Responsible Law Enforcement Agency: Napa Police Department

SERVED  
3-9-03

**FILED**  
NAPA COUNTY  
NOV 4 2002  
SHERIFF'S DEPARTMENT  
JUN 17 2003  
Clerk of the Napa Superior Court  
By: B. J. Jimeno  
Deputy



DA ADC (REV 11/5/96) Arrest/Detention/Complaint Form

PAGE 1 OF 1

ARRESTING AGENCY		NCIC #	NAPA COUNTY CRIMINAL JUSTICE SYSTEM ARREST/DETENTION/COMPLAINT FORM		AGENCY CASE #	PID #
C.D.C.		CA028			03-2723	198602021
TYPE OF ARREST <input type="checkbox"/> ON VIEW <input type="checkbox"/> CITIZEN'S ARREST <input checked="" type="checkbox"/> WARRANT ARREST		<input checked="" type="checkbox"/> ADULT <input type="checkbox"/> JUVENILE	<input type="checkbox"/> REQUEST FOR COMPLAINT & WARRANT (NOT IN CUSTODY) DATE OF OFFENSE		<input type="checkbox"/> DETENTION ONLY RELEASED, PC 849(b)	<input type="checkbox"/> DOMESTIC VIOLENCE <input type="checkbox"/> WEAPONS USED <input type="checkbox"/> NARCOTICS OFFENSE
SUSPECT NAME (FIRST, MIDDLE, LAST)			BUSINESS/SCHOOL NAME		DI #	DOB
TIMOTHY CRAIG			NAPA SEWING PLAZA		N4589759	9-3-58
HOME ADDRESS (STREET, CITY, COUNTY, STATE, ZIP)			BUSINESS/SCHOOL ADDRESS		RACE	SEX
4095 FAIRFAX DR. NAPA CA			NAPA		W	M
HOME PHONE		YEAR	COLOR	SUSPECT'S CAR	TYPE	STYLE
(707) 255-3495						
WORK PHONE		MAKE	MODEL	LICENSE #	STATE	ADDITIONAL DESCRIPTION
NAME (PARENT/GUARDIAN, IF JUVENILE)		RELATIONSHIP	EMERGENCY NOTIFICATION (MUST BE COMPLETED IF JUVENILE)		NOTIFIED BY	DATE/TIME OF ARREST
LUCILLE CRAIG		MOTHER				6-8-03 0930
ADDRESS					DATE	TIME
SAME AS ABOVE						6-10-03 160
LOCATION OF ARREST		ARRESTING OFFICER	TRANSPORTING OFFICER	RECEIVING OFFICER		
			BORLO/MACDONALD			
CHARGES			WARRANT/EVENT #	COURT	BAIL AMT	FMS
CODE	SECTION	OFFENSE DESCRIPTION				
P.C.	12316(B)(1)	POSSESSION OF AMMUNITION	CR108182	NAPA	25K	F
H&S	11364	POSSESSION OF DRUG PARA.				
P.C.	978.5	FAILED TO APPEAR	CR110080	NAPA	25K	M
WARRANT CHECK: <input checked="" type="checkbox"/> LOCAL <input type="checkbox"/> DMV <input type="checkbox"/> DOJ/NCIC HOLDS? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO CONFIRMED BY: N.S.O. RECORDS CUSTODY ALERT: <input type="checkbox"/> PROTECTIVE CUSTODY <input type="checkbox"/> ESCAPE RISK <input type="checkbox"/> MEDICAL RISK (EXPLAIN): <input type="checkbox"/> ASSAULT/COMBATIVE <input type="checkbox"/> SUICIDE RISK <input type="checkbox"/> KEEP SEPARATE FROM (NAME):						
EVIDENCE/COMPLAINT OF ILLNESS/INJURY: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			TREATED BY:		DATE/TIME:	
<input checked="" type="checkbox"/> FELONY ARREST MISDEMEANOR ARRESTS - CHECK ONE OR MORE BELOW PC853.6 CITATION RELEASE EXCEPTIONS <input type="checkbox"/> Intoxicated state may result in danger to self or others <input type="checkbox"/> Arrestee required medical exam or care or could not care for own safety <input type="checkbox"/> The immediate release would jeopardize prosecution <input type="checkbox"/> Arrested for one or more offenses listed under VC40302/40303 <input type="checkbox"/> Demanded immediate appearance or refused to sign written promise to appear <input type="checkbox"/> Imminent danger to safety of other persons or property PC647(g) EXCEPTIONS <input type="checkbox"/> Under the influence of any drug or under the combined influence of any drug and alcohol <input type="checkbox"/> Probable cause to believe arrestee has committed a felony, or misdemeanor other than PC647(f) <input type="checkbox"/> Good faith belief arrestee will attempt escape or is unreasonably difficult for medical personnel to control			BOOKING AUTHORITY <input type="checkbox"/> Arrested for VC23152(a) or VC23152(b) <input type="checkbox"/> There are additional outstanding arrest warrants <input type="checkbox"/> Arrestee had no personal identification <input type="checkbox"/> Release would increase likelihood of offense continuing <input type="checkbox"/> WIC626 <input type="checkbox"/> Reason to believe arrestee would fail to appear (state reason):		COPIES TO: <input checked="" type="checkbox"/> DA <input type="checkbox"/> ADULT PROBATION <input type="checkbox"/> JUVENILE PROBATION <input type="checkbox"/> NSIB <input type="checkbox"/> DETECTIVES <input type="checkbox"/> STATE PAROLE <input type="checkbox"/> CYA <input type="checkbox"/> ADMINISTRATION <input type="checkbox"/> OTHER	
NARRATIVE <input type="checkbox"/> CONTINUATION PAGE ATTACHED DESCRIBE PROBABLE CAUSE FOR ARREST/DETENTION OR CIRCUMSTANCES LEADING TO WARRANT ARREST (DO NOT USE CONTINUATION PAGE UNLESS ABSOLUTELY NECESSARY) TRANSPORTED FROM AVENAL STATE PRISON TO NAPA COUNTY JAIL.						
<input type="checkbox"/> CITIZEN'S ARREST - I HEREBY ARREST THE ABOVE PERSON AND DEMAND HE/SHE BE TAKEN INTO CUSTODY ARRESTING CITIZEN'S SIGNATURE:			DATE:		ARRESTING CITIZEN'S NAME (Print)	
I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA, AND UPON INFORMATION AND BELIEF, THAT THE FOREGOING IS TRUE AND CORRECT. OFFICER'S SIGNATURE:			OFFICER'S NAME (Print):		DATE:	
REVIEWED BY (Signature):			REVIEWED BY (Print Name):		DATE:	

SUPERIOR COURT FOR THE COUNTY OF NAPA  
1111 Third Street/825 Brown Street  
Napa, CA 94559

THE PEOPLE OF THE STATE OF CALIFORNIA  
vs.  
Craig, Timothy  
4095 Fairfax  
Napa, CA 94558  
Plaintiff,  
Defendant.

Case No. CR110080 PID: 198602021-03  
☒ Misdemeanor ☐ Felony  
Sex Hair Eyes HT. WT. Race  
M BRO HAZ 604 230 W  
DOB: 9/3/1958 Driver's License No: N4589759 CA  
Violation Date: 1/30/02

THE PEOPLE OF THE STATE OF CALIFORNIA, TO ANY PEACE OFFICER OF THIS STATE:

The above named and described defendant was convicted in this court of the offense set forth above; or an order was issued; or an accusation was filed charging the defendant with the offense set forth and the above named defendant subsequently failed to obey the order of the court or other requirements of the law, to wit:

Charges  
PC311.11(A)

Status  
Charge Pending

- ☐ Released on Bail - FTA (979 PC)  
☐ Signed Promise to Appear; Did Not Post Bail; Failed to Appear (40515 VC/853.8 PC)  
☐ Violated Terms of Probation (1203.2 PC)  
☐ Failed to Pay Fine (1205 PC)  
☒ Released on Own Recognizance; Failed to Appear/ (978.5 PC)  
☐ Failed to Comply with Court Order or Failed to Complete Work Program  
☐ Failed to Appear for Judgment (1193/1195 PC)

You are ordered to arrest the defendant forthwith and bring him/her before me, or in the case of my absence or inability to act, before the nearest accessible magistrate in the county.

- ☒ Defendant is to be Admitted to Bail \$25,000.00.  
☐ Bail May be Forfeited  
☐ Defendant May be Released on Signed Promise to Appear (818/853.6 PC) If Initialed for Release \_\_\_\_\_  
☐ This Misdemeanor Warrant May be Served at Night (840PC)  
☐ Do Not Cite Release  
☒ Mandatory Appearance Required

By: John Gleason  
Deputy Court Executive Officer

11/1/02  
Date

Responsible Law Enforcement Agency: Napa Police Department





**SUPERIOR COURT OF CALIFORNIA, COUNTY OF NAPA  
MINUTE ORDER**

**Case:** People vs. Craig, Timothy Charles (M)  
**Judge:** Richard A. Bennett  
**Courtroom:** Department E  
**Event:** Conference: Trial Setting  
**PID # :** 198602021-03

**Case #** CR110080  
**Event Date:** October 31, 2002  
**Clerk:** K. Tonascia  
**Reporter:** Cynthia Lomeli  
**Cite/Report #:** 02-0494

**Appearances:**

L. Hafenstein, Deputy D.A.  
Tom Gill, Counsel for Defendant  
Defendant NOT present

**BENCH WARRANTS**

Defendant having failed to appear, the Court orders:

- ☒ Bench Warrant to issue, bail set at \$25,000.00  
    ☐ Service withheld to  
☐ Bench Warrant previously issued on      is ordered vacated and recalled  
☐ Own Recognizance agreement revoked.  
  
☐ Bail Bond is ordered:    ☐ Forfeited.    ☐ Reinstated.

Further orders:

-o0o-

**MODIFY Court Event [C CR110080] - October 10, 2002 at 8:30 am for Conference: Trial Setting in Courtroom Department E**

File ID	CR110080
Caption	People vs. Craig, Timothy Charles (M)
PID Number	198602021-03
Sched Date	10-10-2002
Type	Conference: Trial Setting [411410]
Sched Time	08:30am
Sched Room	Department E [22E]
Judge/Official	Richard A. Bennett [J21110]
Estim Duration/Hours	0.05
Est. Days	
Hearing Information	
Interpreter Flag	
Interpreter	
Interpreter Status	
Result	Cont. Party's Motion-After Hrng. [421210]
Court Clerk	K. Koen [CLRK32]
Court Reporter	Barrie Hart [1CR24]
Defendant or Minor	Present
Memo	Atty: L. Hatenstein & T. Gill. Cont: 10/31/02 at 8:30 a.m. in Dept. E for Trial Setting Conference.



*Tim*

NAPA SUPERIOR COURT		<b>FILED</b> AUG 22 2002 Clerk of the Napa Superior Court By: <u>O. Medina</u> Deputy
Plaintiff	THE PEOPLE OF THE STATE OF CALIFORNIA	
Defendant	<i>Craig, Timothy</i>	
Case Number	<i>CR110080</i>	
<b>ARRAIGNMENT FORM</b> (Statement of Rights)		

### INSTRUCTIONS

Read this form. If you understand it, sign and date the form on page 2. If you have any questions about your case, or the information on this form, ask your attorney or the judge.

1. **RIGHT TO BE ADVISED OF CHARGES** - You have the right to be told what crimes you are charged with and the right to receive a copy of the Complaint or Information.
2. **RIGHT TO BE CHARGED BY TRUE NAME** - You have the right to be charged by your true name. Tell the judge if your name is incorrect.
3. **RIGHT TO AN ATTORNEY** - You have the right to be represented by an attorney in this case. If you are charged with a felony or misdemeanor, the Court will appoint a free attorney for you if you cannot afford to hire one, but, at the end of the case, you may be asked to pay all or part of the cost of that attorney, if you can afford to.
4. **RIGHT TO REPRESENT YOURSELF** - You have the right to represent yourself if you wish. There are dangers in, and disadvantages to, giving up your right to an attorney, and it is almost always unwise to represent yourself. You will be bound by all legal rules and procedures and by the rules of evidence. The People are represented by an experienced prosecutor and you will receive no special help from the judge if you represent yourself.
5. **RIGHT TO REASONABLE BAIL** - You have the right to have reasonable bail set by the judge or to be released on your own recognizance ("O.R."), without the need for posting bail, if you qualify.
6. **RIGHT TO A PRELIMINARY HEARING** - You have the right to a preliminary hearing within 10 court days of the day you enter your plea(s), if you are charged with a felony. This case will be dismissed if the preliminary hearing is not held within 60 days, unless you agree otherwise.
7. **RIGHT TO A TRIAL** - You have the right to a speedy and public jury trial or court trial. (The right to a jury trial does not apply to infractions or probation violations.) At a trial, you would be presumed innocent, and you could not be convicted unless 12 impartial jurors (or the judge at a court trial) were convinced of your guilt beyond a reasonable doubt. For misdemeanors, the trial must be held within 30 days of the day you enter your plea, if you are in custody at the time, or within 45 days of the day you enter your plea, if you are not in custody then. For felonies, the trial must be held within 60 days of the day the information is filed. If a trial is not held within these time periods, then your case may be dismissed.

8. **RIGHT TO PRODUCE EVIDENCE** - You have the right to present evidence, to testify in your own behalf, and to have the Court issue subpoenas to bring into court all witnesses and evidence favorable to you, at no cost to you.
9. **RIGHT TO REMAIN SILENT** - You have the right to remain silent and not incriminate yourself. If you plead guilty or no contest, you are incriminating yourself.
10. **RIGHT TO INFORMAL TRIAL** - If you are charged with an infraction and wish to plead not guilty, you have the right to an informal trial. This means the judge will decide your case based on a written statement provided by you and by the arresting officer. You will be notified of the verdict by mail. You would not need to return to court. If you are not satisfied with the results of the informal trial, you have the right to request a formal trial.
11. **PLEAS** - You may plead GUILTY, NOT GUILTY, NO CONTEST (which has the same effect in this case as a guilty plea), FORMER CONVICTION OR ACQUITTAL, ONCE IN JEOPARDY, or NOT GUILTY BY REASON OF INSANITY.
12. **SENTENCING** - If you are charged with a misdemeanor and plead Guilty or No Contest, then you have the right to have your sentencing postponed for at least 6 hours and not more than 5 days. You may give up that right and be sentenced immediately, so that you do not have to return to court on another day for sentencing.
13. **DIVERSION (OR DEFERRED ENTRY OF JUDGMENT)** - You may be eligible for these programs if you are charged with certain offenses. The charges may eventually be dismissed if you successfully complete the program. Ask the judge to see if you are eligible.
14. **CITIZENSHIP** - If you are not a United States citizen, a plea of Guilty or No Contest could result in your deportation, exclusion from admission to this country, or denial of naturalization.

I have read this form and I understand each paragraph.

DEFENDANT'S SIGNATURE: \_\_\_\_\_

*Timothy Gray*

DATE: \_\_\_\_\_

8-22-02

#### INTERPRETER'S STATEMENT

I, having been sworn, or having a written oath on file, certify that I truly translated this form, and any attachments, to the defendant in the language indicated below. The defendant stated that (s)he understood the contents of the form, and then (s)he initialed and signed the form.

Language: ☐ Spanish ☐ Other (specify) \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF NAPA**  
**MINUTE ORDER**

**Case:** People vs. Craig, Timothy Charles (M)  
**Judge:** Richard A. Bennett  
**Courtroom:** Department E  
**Event:** Hearing: Letter to Appear  
**PID # :** 198602021-03

**Case #** CR110080  
**Event Date:** August 22, 2002  
**Clerk:** T. Smith  
**Reporter:** Karen Kronquest  
**Cite/Report #:** 02-0494

**Appearances:**

L. Hafenstein, Deputy District Attorney  
T. Gill, Representing Defendant who is present

**ARRAIGNMENT**

- ☒ Copy of ☒ Complaint ☐ Information ☐ Amended Information  
☐ Petition for Revocation of Probation ☐ Indictment given to Defendant and Counsel.
- ☒ Counsel/Defendant acknowledges receipt, waives formal reading/arraignment and ☐ confirms Defendant is charged by true and correct name ☐ advises the Court the Defendant's true and correct name is
- ☒ Defendant enters a Not Guilty plea to all Counts of the Complaint.  
☐ Defendant denies the enhancements.
- ☐ Court ☐ confirms ☐ appoints ☐ Re-appoints ☐ Public Defender ☐ Counsel;
- ☐ Defendant to retain private counsel.
- ☐ Court relieves *Choose One* and appoints *Choose One*
- ☒ Discovery is provided to the ☐ Defendant ☐ Public Defender ☒ Mr. Gill ☐ placed in the attorney folders in the criminal division of the Napa Superior Court.
- ☐ Information/ Complaint/ Petition is read. ☒ Reading is waived.  
☐ Court informs defendant of legal rights and possible penalty.
- ☒ The Court orders this matter shall be continued as follows:

DATE	TIME	DEPT	PURPOSE	TIME EST
10/10/02	8:30 a. m.	E	Trial Setting Conference	.05

- ☒ Defendant does waive time. ☐ Defendant enters a 10 day time waiver.
- ☒ Defendant is ordered to appear at the next scheduled hearing(s).

Further orders:



**NAPA COUNTY DISTRICT ATTORNEY'S OFFICE  
MEMORANDUM**

---

**TO:** NAPA COUNTY COURT CLERK/CRIMINAL DIVISION  
**FROM:** MICHELLE ROLLINS/JH  
**DATE:** July 26, 2002  
**RE:** PEOPLE VS. TIMOTHY CHARLES CRAIG/198602021-03

---

Please place the above named matter on calendar as an LTA to be heard at the same date and time as CR108182 (event 02) which is already scheduled for hearing on August 22, 2002 at 8:30 a.m. in Department E. Thank you.

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF NAPA**

**Case Name:** People vs. Craig, Timothy Charles (M)

**Case Number:** CR110080

☐ Amended Notice (If checked)

**TO:** Timothy Charles Craig  
4095 Fairfax  
Napa, CA 94558

**DATE:** August 22, 2002

**TIME:** 8:30 am

**ROOM:** Department E    **LOCATION:** 1111 Third St., Second Floor, Napa

**ORDER TO APPEAR**

A Complaint upon oath having made and filed before this Court by the District Attorney of the County of Napa, a copy of which is attached hereto, you are now ordered to personally appear before this court at the time and date listed above, with or without counsel to answer said charges.

**FAILURE TO APPEAR WILL RESULT IN A WARRANT FOR YOUR ARREST**

**Certificate of Mailing**

I certify that I am over age 18, not a party to this action, and am employed as a clerk by the Superior Court of California, County of Napa in the Criminal Courthouse, 1111 3<sup>rd</sup> Street, Napa, CA 94559 Historic Courthouse, 825 Brown Street, Napa, CA 94559. On, following the ordinary business practices, I placed for collection and mailing at the above named courthouse, a copy of the attached **Order to Appear** in a sealed envelope, with postage fully prepaid, addressed as stated below.

I am readily familiar with the Court's standard practice for collection and processing of correspondence for mailing with the United State's Postal Service and, in the ordinary course of business, the correspondence would be deposited with the United States Postal Service on the day on which it is collected at the Courthouse.

**Date:** 7/29/2002

Stephen A. Bouch, Court Executive Officer

By: 

Deputy Court Executive Officer

\*An Assistive listening system is available upon request pursuant to Section 54.8(a) of the Civil Code



**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF NAPA**

**Case Name:** People vs. Craig, Timothy Charles (M)  
**Case Number:** CR110080

☐ Amended Notice (If checked)

**TO:** Gary A. Lieberstein  
District Attorney 931 Parkway Mall  
Napa, CA 94559

**DATE:** August 22, 2002

**TIME:** 8:30 am

**ROOM:** Department E **LOCATION:** 1111 Third St., Second Floor, Napa

**ORDER TO APPEAR**

A Complaint upon oath having made and filed before this Court by the District Attorney of the County of Napa, a copy of which is attached hereto, you are now ordered to personally appear before this court at the time and date listed above, with or without counsel to answer said charges.

**FAILURE TO APPEAR WILL RESULT IN A WARRANT FOR YOUR ARREST**

**Certificate of Mailing**

I certify that I am over age 18, not a party to this action, and am employed as a clerk by the Superior Court of California, County of Napa in the Criminal Courthouse, 1111 3<sup>rd</sup> Street, Napa, CA 94559 Historic Courthouse, 825 Brown Street, Napa, CA 94559. On, following the ordinary business practices, I placed for collection and mailing at the above named courthouse, a copy of the attached **Order to Appear** in a sealed envelope, with postage fully prepaid, addressed as stated below.

I am readily familiar with the Court's standard practice for collection and processing of correspondence for mailing with the United State's Postal Service and, in the ordinary course of business, the correspondence would be deposited with the United States Postal Service on the day on which it is collected at the Courthouse.

**Date:** 7/29/2002

Stephen A. Bouch, Court Executive Officer

By:   
Deputy Court Executive Officer

\*An Assistive listening system is available upon request pursuant to Section 54.8(a) of the Civil Code

104

STATE of CALIFORNIA - COUNTY of NAPA  
**RETURN TO SEARCH WARRANT**

AUG 16 2007

Police Officer / Investigator Joseph Jones, being sworn, says that he/she conducted a search pursuant to the Search Warrant described below:

Issuing Magistrate Judge John Anton

By: [Signature]  
 Deputy

Magistrate's Court : Superior Court of California, County of Napa.

Date of Issuance : August 7th, 2007

Date of Service : August 7th, 2007

and searched the following location(s), vehicle(s), and person(s):

THE PREMISES at 3271 Beard Road, Napa, California, 94558; further described as a two-story apartment complex with peach colored, stucco exterior, and off white wood trim, and the numbers 3271 affixed on the outside of the residence, to the left of the off white wood front door; including all rooms, attics, basements, and other parts therein, the surrounding grounds and any garages, storage rooms, trash containers, and outbuildings of any kind located thereon.

THE VEHICLE described as a 2006, Jeep, Lerado, silver bearing California license # 5PSH633 including containers of any kind within the vehicle.

THE VEHICLE described as a 2005, Ford bearing California license # 5TMV102 including containers of any kind within the vehicle.

THE PERSON of Timothy Charles Craig, described as a male, white, 6 ft 4 inches tall, weighing approximately 255 pounds, with red hair, hazel eyes, born on 09.03.1958, with California drivers license #: N4589759

I hereby certify the document herein to be a true and correct copy of the original on file with this court.

and Seized the Items\*

☒ described in the attached and incorporated inventory.

☐ described below :

Dated: 3/12/08

Clerk of the Napa Superior Court

BY: \_\_\_\_\_



I further swear that this is a true and detailed account of all the property taken by me pursuant to the search warrant, and the pursuant to Penal Code Sections 1528 and 1536 this property will be retained in my custody, subject to the order of this court or of any other court in which the offense in respect to which the seized property is triable.

[Signature]  
 (Signature of Affiant)

Sworn to and Subscribed before me this 16 day of August, 2007, at 2:38 A.M./P.M.

[Signature]  
 (Signature of Magistrate)

Judge of the Superior Court of California, County of Napa.

\_\_\_\_\_  
 (Magistrate's Printed Name)

\* List all items seized, including those not specifically listed on the Search Warrant

# NAPA COUNTY SHERIFF'S DEPARTMENT PROPERTY RECORD

2 DATE OF THIS REPORT 8-8-07		3 CRIME CODE 311-11 PC		8 PAGE 1 OF 3	
6 EDUCATION PROPERTY COLLECTED 3271 BEARD ROAD				7 <input type="checkbox"/> FELONY <input type="checkbox"/> MISD. <input type="checkbox"/> ADULT <input type="checkbox"/> JUVENILE <input type="checkbox"/> ARREST <input type="checkbox"/> FOUND PROPERTY <input type="checkbox"/> CITATION <input type="checkbox"/> OTHER	
8 VICTIM/OWNER/SUSPECT/FINDER/OTHER 1. CRAIG, TIMOTHY		9 D.O.B.		10 ADDRESS 3271 BEARD, NAPA	
13 VICTIM/OWNER/SUSPECT/FINDER/OTHER 2.		14 D.O.B.		15 ADDRESS	
18 VICTIM/OWNER/SUSPECT/FINDER/OTHER 3.		19 D.O.B.		20 ADDRESS	
23 VICTIM/OWNER/SUSPECT/FINDER/OTHER 4.		24 D.O.B.		25 ADDRESS	
27 1. PROPERTY CODE  E = EVIDENCE  C = IN CUSTODY  N = NOT IN STORAGE		28 2. PROPERTY TYPE  A = ASSET FORFEITURE C = CONTRABAND E = EVIDENCE F = FOUND K = SAFEKEEPING H = 8102 W & I (5150 GUNS)  D = OTHER R = RECOVERED S = STOLEN W = SEARCH WARRANT		29 COMMENTS: FIREARMS WANTS (10-29) HISTORY (10-28) TO BE ATTACHED BY OFFICER	
3. PROPERTY CATEGORIES					
A = AUTOMOTIVE B = BICYCLE C = CAMERA/PHOTO EQUIP D = DRUG/PARAPHERNALIA E = EQUIPMENT/TOOLS F = FIREARMS/WEAPONS G = TRACE EVIDENCE H = HOUSEHOLD GOODS I = INDICIA J = JEWELRY/WATCH/PRECIOUS METALS K = PHYSIOLOGICAL FLUIDS L = CLOTHING M = MUSICAL EQUIP N = CASSETTES O = OFFICE/COMPUTER EQUIP P = PERSONAL ACCESSORY R = RADIO/STEREO/SOUND S = SPORT/CAMPING EQUIP T = TELEVISION/VCR/VIDEO U = CONSUMABLES V = PHOTO LINE UP/PHOTOS W = WALLET/PURSE X = MONEY Y = OTHER Z = CREDIT CARDS					
TH 1 E E VHS TAPE KITCHEN COUNTER TH 2 E E BLOW UP DOG CHILD SIZED - FOUND IN KITCHEN CABINET ABOVE Fridge TH 3 3 CD ROMS FOUND ON KITCHEN COUNTER TH 4 "NICKELBACK" CD ROM - KITCHEN TABLE TH 5 NIKON CAMERA TH 6 CANON DIGITAL CAMERA TH 7 JVC COMPACT VHS CAMERA					
<input type="checkbox"/> NOTIFICATION OF RIGHTS This form constitutes notification of your rights according to law. Your signature is not an admission of responsibility, but indicates that you have received a copy of this notice. Please review the back of this sheet for an explanation of your rights. <input type="checkbox"/> FOUND PROPERTY (Required by Cal. Civil Code 2080) I declare under penalty of perjury, that the listed items were found, that all items found have been surrendered and I do not know the identity of the true owner. Finder wishes to claim found property after 90 days: <input type="checkbox"/> YES <input type="checkbox"/> NO. <input checked="" type="checkbox"/> X SIGNATURE _____ DATE _____					

WHITE - PROPERTY ROOM

CANARY - MASTER FILE

PINK - PROPERTY ROOM

GOLDENROD - RECEIPT / NOTIFICATION OF RIGHTS.



**NAPA COUNTY SHERIFF'S DEPARTMENT  
CONTINUATION  
PROPERTY RECORD**

45 DATE OF THIS REPORT <b>8/8/07</b>		46 CRIME CODE		47 PAGE <b>2</b> OF <b>3</b>		PROPERTY ROOM ONLY	
48 VICTIM/OWNER/SUSPECT (circle one)				49 D.O.B.		50 PHONE	
51 ADDRESS <b>3271 BEARD RD.</b>				52 PID #			
53 EVID.	54 QTY.	55 TYPE	56 CAT.	57 ARTICLE	58 BRAND	59 MODEL	60 SERIAL NO.
							PROP. ROOM ONLY
<b>T118</b>				<b>TOHIBA SATELITE M115 SN X61049308</b>			
				<b>LIVING ROOM STAND - w/ WIRELESS CARD</b>			
<b>T119</b>				<b>MISC CD'S LIVING ROOM FLOOR</b>			
<b>T120</b>				<b>MISC 3 1/4" floppy DISCS L/R FLOOR</b>			
<b>T121</b>				<b>GROSSY PRINTS "JETSON'S" UNDER L/R TABLE</b>			
<b>T122</b>				<b>PORNOGRAPHY CATALOGUE - BLACK BAG D/R</b>			
<b>T123</b>				<b>ROLL 35mm FILM EXPOSED COFFEE TABLE</b>			
<b>T124</b>				<b>MISC TEEN RELATED PORNOGRAPHY L/R FLOOR NEAR OR UNDER COUNCH</b>			
<b>T125</b>				<b>WOOD COUNTER w/ MARIJUANA</b>			
<b>T126</b>				<b>CD SPOT w/ MISC CD-R'S L/R SHELF</b>			
<b>T127</b>				<b>BOXES w/ PORN DVD'S BEDROOM CLOSET</b>			
<b>T128</b>				<b>PORNOGRAPHY BEDROOM FLOOR</b>			
<b>T129</b>				<b>GIRLS PANTIES + HAT</b>			
61 COLLECTING OFFICER <b>1 Hancock</b>		62 PROPERTY SUPERVISOR		63 LOCKER NO.		64 APPROVED BY	

WHITE - PROPERTY ROOM

CANARY - MASTER FILE

PINK - PROPERTY ROOM

GOLDENROD - RECEIPT

**NAPA COUNTY SHERIFF'S DEPARTMENT  
CONTINUATION  
PROPERTY RECORD**

46 DATE OF THIS REPORT <b>8-8-07</b>		46 CRIME CODE		47 PAGE <b>3</b> OF <b>3</b>		PROPERTY ROOM ONLY	
48 VICTIM/OWNER/SUSPECT (circle one)				49 D.O.B.		50 PHONE	
51 ADDRESS <b>3271 Beard Road</b>						52 PID #	
53 ITEM #	54 CODE	55 TYPE	56 CAT	57 ARTICLE	58 BRAND	59 MODEL	60 SERIAL NO.
							PROP. ROOM ONLY
<b>700</b>				<b>GLASS MARIJUANA PIPE w/ BURNT VEG</b>			
				<b>L/R COFFEE TABLE</b>			
<b>701</b>				<b>2 WOOD BOXES, 2 BAGGIES LOOSE MARIJUANA</b>			
				<b>CONT MARIJUANA, P.PES, WHITE RESIDUE L/R COUCH</b>			
<b>702</b>				<b>2 VHS TAPES. BEDROOM &amp; CLOSET</b>			
<b>703</b>				<b>SOFT PS 1 SIN P0227491766 w/ MEM CARD</b>			
				<b>L/R BY TV</b>			
<b>704</b>				<b>RED BOX CONT DIGITAL MEDIA, CD'S</b>			
				<b>L/R TV</b>			
<b>705</b>				<b>VHS TAPES, DVD'S TV STAND L/R</b>			
<b>706</b>				<b>INDICIA KITCHEN</b>			
<b>707</b>				<b>"GRASSROOTS" CD- CONT BLANK CD-R</b>			
				<b>L/R TABLE</b>			
<b>708</b>				<b>POLAROID NAKED BOY - NEGATIVES</b>			
				<b>KITCHEN TABLE</b>			
<b>709</b>				<b>SOFT CD-R L/R FISHBANK</b>			
<b>710</b>				<b>YELLOW PAD w/ HANDWRITTEN STORY</b>			
				<b>CARPET #8 STORAGE</b>			
61 RECEIVED BY OFFICER <b>W. Hancock</b>				62 PROPERTY LOCKER NO.		63 DATE <b>8-8-07</b>	
64 APPROVED BY				65 SIGNATURE		66 DATE	

WHITE - PROPERTY ROOM

CANARY - MASTER FILE

PINK - PROPERTY ROOM

GOLDENROD - RECEIPT

SW NO. 104

**STATE of CALIFORNIA, COUNTY of NAPA**  
**SEARCH WARRANT AND AFFIDAVIT**  
**(AFFIDAVIT)**

AUG 16 2007  
 Clerk of the Napa Superior Court

Detective Joseph Jones declares under penalty of perjury that the facts expressed by him/her in the attached and incorporated Statement of Probable Cause are true and that based thereon he/she has probable cause to believe and does believe that the articles, property, and persons described below are lawfully seizable pursuant to Penal Code Section 1524, as indicated below, and are now located at the locations set forth below. Wherefore, Affiant requests that this Search Warrant be issued.

  
 (Signature of Affiant)

NIGHT SEARCH REQUESTED: YES ☐ NO ☒

**(SEARCH WARRANT)**

THE PEOPLE OF THE STATE OF CALIFORNIA TO ANY SHERIFF, POLICEMAN OR PEACE OFFICER IN THE COUNTY OF NAPA: proof by affidavit, under penalty of perjury, having been made before me by Police Officer / Investigator Detective Joseph Jones that there is probable cause to believe that the property or person described herein may be found at the location(s) set forth herein and that it is lawfully seizable pursuant to Penal Code Section 1524 as indicated below by "x"(s) in that it:

- ☐ was stolen or embezzled.
- ☐ was used as the means of committing a felony.
- ☒ is possessed by a person with the intent to use it as means of committing a public offense or is possessed by another to whom he or she may have delivered it for the purpose of concealing it or preventing its discovery.
- ☐ tends to show that a felony has been committed or that a particular person has committed a felony.
- ☒ tends to show that sexual exploitation of a child, in violation of Penal Code Section 311.3, or possession of matter depicting sexual conduct of a person under the age of 18 years, in violation of Section 311.11, has occurred or is occurring.
- ☐ there is a warrant to arrest the person.

You are Therefore **COMMANDED** to SEARCH: (premises, vehicles, persons)

THE PREMISES at 3271 Beard Road, Napa, California, 94558; further described as a two-story apartment complex with peach colored, stucco exterior, and off white wood trim, and the numbers 3271 affixed on the outside of the residence, to the left of the off white wood front door; including all rooms, attics, basements, and other parts therein, the surrounding grounds and any garages, storage rooms, trash containers, and outbuildings of any kind located thereon.

THE VEHICLE described as a 2006, Jeep, Lerado, silver bearing California license # 5PSH633 including containers of any kind within the vehicle.

THE VEHICLE described as a 2005, Ford bearing California license # 5TMV102 including containers of any kind within the vehicle.

THE PERSON of Timothy Charles Craig, described as a male, white, 6 ft 4 inches tall, weighing approximately 255 pounds, with red hair, hzl eyes, born on 09.03.1958, with California drivers license #: N4589759.

For the FOLLOWING PROPERTY or PERSON(s):

Child pornography, including message # 223, in Craig's inbox, including records, images, and videos whether stored on paper, on magnetic media such as tape, cassette, disk, diskette or on memory storage devices such as optical disks, programmable instruments such as telephones, "electronic calendar/address books" calculators, or any other storage media, together with indicia of use, ownership, possession, or control of such records.



Electronic data processing and storage devices, computers and computer systems, such as central processing units, internal and peripheral storage devices such as fixed disks, external hard disks, floppy disk drives and diskettes, tape drives and tapes, optical storage devices or other memory storage devices; peripheral input/output devices such as keyboards, printers, video display monitors, optical readers and related communication devices such as acoustic or electrical modems, associated telephone sets, speed dialers, or other controlling devices, plotters, software to run programs, connecting cables and plugs, peripherals such as joysticks, or other input devices, scanners, writing pads, manuals, power backup devices, connecting switches, power sources, telephones and telephone cables, and interface devices.

All of the above records, whether stored on paper, on magnetic media such as tape, cassette, disk, diskette or on memory storage devices such as optical disks, programmable instruments such as telephones, "electronic calendar/address books" calculators, or any other storage media, together with indicia of use, ownership, possession, or control of such records.

Computing or data processing software, stored on any type of medium such as: hard disks, floppy disks, CD-R's, CD-RW's, DVD's, cassette tapes, integral RAM or ROM units, or other permanent or transient storage medium.

Computer or data processing literature, such as instruction books, manuals or listed computer programs in whole or in part.

Examination and search of computers and computer system components such as; CPU central processing units, internal and peripheral storage devices such as internal or external hard drives, removable storage devices and disks/hard drives, floppy disk drives and diskettes, CD-R, CD-RW, DVD drives and disks, tape drives and tapes, optical storage devices or other memory storage devices, integral RAM or ROM devices; peripheral input/output devices such as keyboards, touch pads, printers, scanners, plotters, cameras, video display monitors, modems, external data storage devices, optical readers and related communication devices such as acoustic or electrical modems, or other controlling devices such as diskettes, CD-R, CD-RW, DVD disks, power back-up devices, connecting switches, interface devices, software to run programs, connecting cables, switches, power sources, and plugs.

Examination and search of all of the above components is for files, data, images, software, operating systems, deleted files, system configurations, drive and disk configurations, date and time, unallocated and slack space, for evidence.

It is your Affiant's experience that computer system forensic examinations and searches cannot be completed within the ten days in which the Search Warrant must be served and the Return to Search Warrant filed with the Search Warrant. It is requested that the 10-day requirement be waived to provide your Affiant ample time to have it processed and comply with the Search Warrant in a timely manner. The Return to Search Warrant and Search Warrant will be filed promptly upon completion of the computer system forensic examination and search.

Any articles of personal property tending to establish the identity of persons who have dominion and control over the premises, automobiles, or items to be seized, including rent receipts, utility bills, telephone bills, miscellaneous addressed mail, personal letters, personal identification, keys, purchase receipts, sales

, receipts, tax statements, payroll check stubs, photographs, vehicle ownership certificates or "pink slips," and vehicle registration slips.

AND TO SEIZE IT / THEM IF FOUND and bring it / them forthwith before me, or this court, at the courthouse of this court. This Search Warrant and Affidavit and attached and incorporated Statement of Probable Cause were sworn to as true under penalty of perjury and subscribed before me on this 7 day of July, 2007, at 11:15 A.M. / P.M. Wherefore, I find probable cause for the issuance of this Search Warrant and do issue it.

  
(Signature of Magistrate)

KNOCK - NOTICE EXCUSED: YES ☐ NO ☒

NIGHT SEARCH APPROVED: YES ☐ NO ☒

Judge of the Superior Court of California, County of Napa

  
(Magistrate's Printed Name)

Reviewed by: \_\_\_\_\_ Date: \_\_\_\_\_ at \_\_\_\_\_ A.M. / P.M.

\_\_\_\_\_

**STATE of CALIFORNIA, COUNTY of NAPA,**  
**ATTACHED and INCORPORATED**  
**STATEMENT OF PROBABLE CAUSE**

Affiant declares under penalty of perjury that the following facts are true and that there is probable cause to believe, and Affiant does believe, that the designated articles, property, and persons are now in the described locations, including all rooms, buildings, and structures used in connection with the premises and buildings adjoining them, the vehicles and the persons:

Your affiant, Detective Joseph Jones, is employed as a full-time, sworn law enforcement officer for The Napa County Sheriff's Department and has been for the past 5 years. Your affiant has a total of 7 years of Law Enforcement experience.

During Your Affiant's tenure, Your Affiant has investigated numerous cases involving violent crimes, financial crimes, thefts, burglaries, computer- and communications-related crimes, and identity theft related crimes. On May 12, 1995 your affiant graduated from the Butte College Basic Law Enforcement Academy, your affiant has also obtained a basic and intermediate P.O.S.T. Certificate. Your Affiant has received 40 hours of training in the examination of subjects under the influence of narcotics and drugs. In addition Your Affiant completed an 8 hour course from the California Narcotics Officers Association in Narcotic Street Development, and 32 hours of instruction from the California Department of Justice in Informant Development and Maintenance. Your Affiant has received 60 hours of P.O.S.T. training from the Sacramento County Sheriff's Department in, Basic Crime Scene Investigation and Reconstruction. Your Affiant holds an Associate of Science Degree, in Administration of Justice from Napa Valley College.

Your Affiant has received 160 hours of P.O.S.T. training from the Contra Costa County Sheriff's Department training facility in Advanced Accident Reconstruction. Your Affiant also received an additional 80 hours of training from the California Highway Patrol in, Commercial Vehicle Enforcement.

Additionally, your affiant has received training in electronic crimes from the California Department of Justice and the Northern California Computer Crimes Task Force, including High Technology Computer Crime Investigation, and the investigation of Internet crimes. In November of 2000 Your Affiant received 8 hours of training from the Search Foundation in the Introduction to Internet Crime Investigations. In December of 2003 Your Affiant received 36 hours of instruction in High Technology and Computer Crime Investigations, from The California Department of Justice. In October of 2004, Your Affiant received 80 hours of instruction from The California Department of justice in Computer Digital Evidence Recovery. In February of 2005 Your Affiant received 80 hours of instruction from the California Department of Justice in, Computer Forensics. In August, 2005 Your Affiant received 84 hours of training from the California State University, Sacramento and the Institute of Criminal Investigations.

1 Your affiant is currently assigned to the Napa County Sheriff's Department, Investigations Division, and is  
2 tasked with the investigation of crimes as they relate to the illegal use, abuse or theft of electronic service,  
3 technology, online fraud, computer equipment theft, general thefts/burglaries, crimes against persons, child  
4 pornography, and identity theft.

5  
6 In July, 2007 Your Affiant received information from the Department of Homeland Security, Immigration  
7 Customs Enforcement Division. In November 2005 special agents with the Cleveland office of the  
8 Department of Homeland Security received information related to the possession and/or distribution of child  
9 pornography. Agents were lead to believe that Lee Sly of North Royalton Ohio had received child  
10 pornography via an email.

11  
12 In January 20007, agents received additional information from the Orland Park, IL Police Department.  
13 Officers discovered Richard Darkey was involved in trading child pornography via the internet. Darkey  
14 received an image of child pornography from the screen name "SIRIOUT3", identified as Lee Sly.

15  
16 On March 1, 2007 agents served America Online with a federal search warrant for Sly's email account  
17 information. A further examination of his account revealed 125 other individuals engaged in trading child  
18 pornography (Reference Attachment). All the investigative leads contained at least one image or movie file  
19 of child pornography received, forwarded, and/or traded by each target in January and February of 2007.  
20 The America Online search warrant results indicated that Timothy Craig was a suspect in this investigation.  
21 The records indicated the following:

22  
23 "Limosdude"- Tim Craig, 3271 Beard Rd., Napa, CA, 94558, (707)257-1282.  
24 Message # 223 in Sly's "sent" folder.

25  
26 Based on this information Special Agent Charles H. Demore summonsed records from Pacific Gas &  
27 Electric for records of service as 3271 Beard Road, Napa, California, 94015. Those records indicate a  
28 customer name of "Tim Craig" with a telephone number of (707)257-1282.

29  
30 Your Affiant further conducted a records check and discovered Timothy Charles Craig (09.03.1958)  
31 residing at 3271 Beard Road, Napa, California is a PC290 registered sex offender with the California  
32 Department of Justice.

33  
34 Your Affiant requests a warrant be issued for the following:

35 THE PREMISES at 3271 Beard Road, Napa, California, 94558; further described as a two-story apartment  
36 complex with peach colored, stucco exterior, and off white wood trim, and the numbers 3271 affixed on the  
37 outside of the residence, to the left of the off white wood front door; including all rooms, attics, basements, and  
38 other parts therein, the surrounding grounds and any garages, storage rooms, trash containers, and  
39 outbuildings of any kind located thereon.



1  
2 THE VEHICLE described as a 2006, Jeep, Lerado, silver bearing California license # 5PSH633 including  
3 containers of any kind within the vehicle.

4  
5 THE VEHICLE described as a 2005, Ford bearing California license # 5TMV102 including containers of any  
6 kind within the vehicle.

7  
8 THE PERSON of Timothy Charles Craig, described as a male, white, 6 ft 4 inches tall, weighing  
9 approximately 255 pounds, with red hair, hzl eyes, born on 09.03.1958, with California drivers license #:  
10 N4589759.

11  
12 Child pornography, including message # 223, in Craig's inbox, including records, images, and videos  
13 whether stored on paper, on magnetic media such as tape, cassette, disk, diskette or on memory storage  
14 devices such as optical disks, programmable instruments such as telephones, "electronic calendar/address  
15 books" calculators, or any other storage media, together with indicia of use, ownership, possession, or  
16 control of such records.

17  
18 Electronic data processing and storage devices, computers and computer systems, such as central  
19 processing units, internal and peripheral storage devices such as fixed disks, external hard disks, floppy  
20 disk drives and diskettes, tape drives and tapes, optical storage devices or other memory storage devices;  
21 peripheral input/output devices such as keyboards, printers, video display monitors, optical readers and  
22 related communication devices such as acoustic or electrical modems, associated telephone sets, speed  
23 dialers, or other controlling devices, plotters, software to run programs, connecting cables and plugs,  
24 peripherals such as joysticks, or other input devices, scanners, writing pads, manuals, power backup  
25 devices, connecting switches, power sources, telephones and telephone cables, and interface devices.

26  
27 All of the above records, whether stored on paper, on magnetic media such as tape, cassette, disk, diskette or  
28 on memory storage devices such as optical disks, programmable instruments such as telephones, "electronic  
29 calendar/address books" calculators, or any other storage media, together with indicia of use, ownership,  
30 possession, or control of such records.

31  
32 Computing or data processing software, stored on any type of medium such as: hard disks, floppy disks, CD-  
33 R's, CD-RW's, DVD's, cassette tapes, integral RAM or ROM units, or other permanent or transient storage  
34 medium.

35  
36 Computer or data processing literature, such as instruction books, manuals or listed computer programs in  
37 whole or in part.

38  
39 Examination and search of computers and computer system components such as; CPU central processing  
40 units, internal and peripheral storage devices such as internal or external hard drives, removable storage  
41 devices and disks/hard drives, floppy disk drives and diskettes, CD-R, CD-RW, DVD drives and disks, tape  
42 drives and tapes, optical storage devices or other memory storage devices, integral RAM or ROM devices;  
43 peripheral input/output devices such as keyboards, touch pads, printers, scanners, plotters, cameras, video

display monitors, modems, external data storage devices, optical readers and related communication devices such as acoustic or electrical modems, or other controlling devices such as diskettes, CD-R, CD-RW, DVD disks, power back-up devices, connecting switches, interface devices, software to run programs, connecting cables, switches, power sources, and plugs.

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Any articles of personal property tending to establish the identity of persons who have dominion and control over the premises, automobiles, or items to be seized, including rent receipts, utility bills, telephone bills, miscellaneous addressed mail, personal letters, personal identification, keys, purchase receipts, sales receipts, tax statements, payroll check stubs, photographs, vehicle ownership certificates or "pink slips," and vehicle registration slips.

Your Affiant requests that during the execution of this search warrant that law enforcement officers or assigned representatives are authorized to video tape and / or photograph / digital image the site, evidence at the site and / or people or persons at the site.

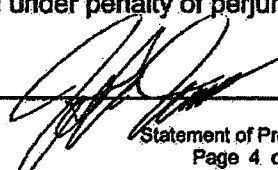
Through experience and training, your affiant knows those individuals engaged in the possession, and distribution of child pornography will store those files in various locations, and on various forms of digital media including computer hard drives, and external storage locations. These individuals will often obtain, trade, and distribute these pornographic images via an internet connection, provided by an Internet Service Provider.

YOUR AFFIANT requests that a Search Warrant be issued based upon the aforementioned facts, for the seizure of said property, or any part thereof, between the hours of 7:00 A.M. and 10:00 P.M., good cause being shown thereof, and the same be brought before this Magistrate or retained subject to the order of the court, or of any court in which the offense(s) in respect to which the property of things taken, triable, pursuant to Section 1536 of the Penal Code,

Items attached and incorporated by Reference: YES ☒ NO ☒

YOUR AFFIANT certify (declare) under penalty of perjury that the foregoing is true and correct.

Executed at Napa, California



(Signature of Affiant)

Date: 8/7/2007 at 1115 A.M./P.M.

Reviewed by: \_\_\_\_\_ Date: \_\_\_\_\_ at \_\_\_\_\_ A.M. / P.M.

**MODIFY Court Event [C CR108182] - July 23, 2003 at 8:30 am for Hearing: Plea/Setting in Courtroom Department E**

File ID	CR108182
Caption	People vs. Craig, Timothy Charles (M)
PID Number	198602021-02
Sched Date	07-23-2003
Type	Hearing: Plea/Setting [412190]
Sched Time	08:30am
Sched Room	Department E [22E]
Judge/Official	Richard A. Bennett [J21110]
Estim Duration/Hours	0.05
Est. Days	
Hearing Information	
Interpreter Flag	
Interpreter	
Interpreter Status	
Result	Case Dismissed [461110]
Court Clerk	V. Kollin [CLRK5]
Court Reporter	Benita Duncan [1CR3]
Defendant or Minor	present
Memo	Hafenstein, DDA; T. Gil, Atty. for Def. -- Upon Motion of the District Attorney, Court orders matter DISMISSED in the interest of justice.

I hereby certify the document herein  
to be a true and correct copy of the  
original on file with this court.



Date: 3/12/08

Clerk of the Napa Superior Court

BY: \_\_\_\_\_

## **EXHIBIT C -ATTACHMENT 2**

STATE OF CALIFORNIA, COUNTY OF NAPA  
**SEARCH WARRANT AND AFFIDAVIT**  
**(AFFIDAVIT)**

AUG 16 2007

Clerk of the Napa Superior Court

Detective Joseph Jones declares under penalty of perjury that the facts expressed by him/her in the attached and incorporated Statement of Probable Cause are true and that based thereon he/she has probable cause to believe and does believe that the articles, property, and persons described below are lawfully seizable pursuant to Penal Code Section 1524, as indicated below, and are now located at the locations set forth below. Wherefore, Affiant requests that this Search Warrant be issued.

NSD #

NIGHT SEARCH REQUESTED: YES ☐ NO ☒

**(SEARCH WARRANT)** J JONES, #175

THE PEOPLE OF THE STATE OF CALIFORNIA TO ANY SHERIFF, POLICEMAN OR PEACE OFFICER IN THE COUNTY OF NAPA: proof by affidavit, under penalty of perjury, having been made before me by Police Officer / Investigator Detective Joseph Jones that there is probable cause to believe that the property or person described herein may be found at the location(s) set forth herein and that it is lawfully seizable pursuant to Penal Code Section 1524 as indicated below by "x"(s) in that it

- ☐ was stolen or embezzled.
- ☐ was used as the means of committing a felony.
- ☒ is possessed by a person with the intent to use it as means of committing a public offense or is possessed by another to whom he or she may have delivered it for the purpose of concealing it or preventing its discovery.
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THE PERSON of Timothy Charles Craig, described as a male, white, 6 ft 4 inches tall, weighing approximately 255 pounds, with red hair, haz eyes, born on 09.03.1958, with California drivers license #: N4589759.

For the **FOLLOWING PROPERTY** or **PERSON(s)**:

Child pornography, including message # 223, in Craig's inbox, including records, images, and videos whether stored on paper, on magnetic media such as tape, cassette, disk, diskette or on memory storage devices such as optical disks, programmable instruments such as telephones, "electronic calendar/address books" calculators, or any other storage media, together with indicia of use, ownership, possession, or control of such records.



Electronic data processing and storage devices, computers and computer systems, such as central processing units, internal and peripheral storage devices such as fixed disks, external hard disks, floppy disk drives and diskettes, tape drives and tapes, optical storage devices or other memory storage devices; peripheral input/output devices such as keyboards, printers, video display monitors, optical readers and related communication devices such as acoustic or electrical modems, associated telephone sets, speed dialers, or other controlling devices, plotters, software to run programs, connecting cables and plugs, peripherals such as joysticks, or other input devices, scanners, writing pads, manuals, power backup devices, connecting switches, power sources, telephones and telephone cables, and interface devices.

All of the above records, whether stored on paper, on magnetic media such as tape, cassette, diskette or on memory storage devices such as optical disks, programmable instruments such as telephones, "electronic calendar/address books" calculators, or any other storage media, together with indicia of use, ownership, possession, or control of such records.

Computing or data processing software, stored on any type of medium such as: hard disks, floppy disks, CD-R's, CD-RW's, DVD's, cassette tapes, integral RAM or ROM units, or other permanent or transient storage medium.

Computer or data processing literature, such as instruction books, manuals or listed computer programs in whole or in part.

Examination and search of computers and computer system components such as CPU central processing units, internal and peripheral storage devices such as internal or external hard drives, removable storage devices and disks/hard drives, floppy disk drives and diskettes, CD-R, CD-RW, DVD drives and disks, tape drives and tapes, optical storage devices or other memory storage devices, integral RAM or ROM devices; peripheral input/output devices such as keyboards, touch pads, printers, scanners, plotters, cameras, video display monitors, modems, external data storage devices, optical readers and related communication devices such as acoustic or electrical modems, or other controlling devices such as diskettes, CD-R, CD-RW, DVD disks, power back-up devices, connecting switches, interface devices, software to run programs, connecting cables, switches, power sources, and plugs.

Examination and search of all of the above components is for files, data, images, software, operating systems, deleted files, system configurations, drive and disk configurations, date and time, unallocated and slack space, for evidence.

It is your Affiant's experience that computer system forensic examinations and searches cannot be completed within the ten days in which the Search Warrant must be served and the Return to Search Warrant filed with the Search Warrant. It is requested that the 10-day requirement be waived to provide your Affiant ample time to have it processed and comply with the Search Warrant in a timely manner. The Return to Search Warrant and Search Warrant will be filed promptly upon completion of the computer system forensic examination and search.

Any articles of personal property tending to establish the identity of persons who have dominion and control over the premises, automobiles, or items to be seized, including rent receipts, utility bills, telephone bills, miscellaneous addressed mail, personal letters, personal identification, keys, purchase receipts, sales

AND TO SEIZE IT / THEM IF FOUND and bring it / them forthwith before me, or this court, at the courthouse of this court. This Search Warrant and Affidavit and attached and incorporated Statement of Probable Cause were sworn to as true under penalty of perjury and subscribed before me on this 1 day of July, 2007, at 11:15 A.M. / P.M. Wherefore, I find probable cause for the issuance of this Search Warrant and do issue it.

[Signature]  
(Signature of Magistrate)

Judge of the Superior Court of California, County of Napa

JOHN N. ANTON  
(Magistrate's Printed Name)

KNOCK - NOTICE EXCUSED: YES ☐ NO ☒  
NIGHT SEARCH APPROVED: YES ☐ NO ☒

NSD.#

07003262

J JONES, #175

Reviewed by: \_\_\_\_\_ Date: \_\_\_\_\_ at \_\_\_\_\_ A.M. / P.M.

NAPA SHERIFF'S DEPARTMENT  
CONTROLLED DOCUMENT  
NOT TO BE DUPLICATED  
RELEASED TO \_\_\_\_\_  
RELEASED BY \_\_\_\_\_  
DATE \_\_\_\_\_

## STATEMENT OF PROBABLE CAUSE, #175

Affiant declares under penalty of perjury that the following facts are true and that there is probable cause to believe, and Affiant does believe, that the designated articles, property, and persons are now in the described locations, including all rooms, buildings, and structures used in connection with the premises and buildings adjoining them, the vehicles and the persons:

Your affiant, Detective Joseph Jones, is employed as a full-time, sworn law enforcement officer for The Napa County Sheriff's Department and has been for the past 5 years. Your affiant has a total of 7 years of Law Enforcement experience.

During Your Affiant's tenure, Your Affiant has investigated numerous cases involving violent crimes, financial crimes, thefts, burglaries, computer- and communications-related crimes, and identity theft related crimes. On May 12, 1995 your affiant graduated from the Butte College Basic Law Enforcement Academy, your affiant has also obtained a basic and intermediate P.O.S.T. Certificate. Your Affiant has received 40 hours of training in the examination of subjects under the influence of narcotics and drugs. In addition Your Affiant completed an 8 hour course from the California Narcotics Officers Association in Narcotic Street Development, and 32 hours of instruction from the California Department of Justice in Informant Development and Maintenance. Your Affiant has received 60 hours of P.O.S.T. training from the Sacramento County Sheriff's Department in, Basic Crime Scene Investigation and Reconstruction. Your Affiant holds an Associate of Science Degree, in Administration of Justice from Napa Valley College.

Your Affiant has received 160 hours of P.O.S.T. training from the Contra Costa County Sheriff's Department training facility in Advanced Accident Reconstruction. Your Affiant also received an additional 80 hours of training from the California Highway Patrol in, Commercial Vehicle Enforcement.

Additionally, your affiant has received training in electronic crimes from the California Department of Justice and the Northern California Computer Crimes Task Force, including High Technology Computer Crime Investigation, and the Investigation of Internet crimes. In November of 2000 Your Affiant received 8 hours of training from the Search Foundation in the Introduction to Internet Crime Investigations. In December of 2003 Your Affiant received 36 hours of instruction in High Technology and Computer Crime Investigations, from The California Department of Justice. In October of 2004, Your Affiant received 80 hours of instruction from The California Department of Justice in Computer Digital Evidence Recovery. In February of 2005 Your Affiant received 80 hours of instruction from the California Department of Justice in, Computer Forensics. In August, 2005 Your Affiant received 84 hours of training from the California State University, Sacramento and the Institute of Criminal Investigations.

tasked with the investigation of crimes as they relate to the illegal use, abuse or theft of electronic service, technology, online fraud, computer equipment theft, general thefts/burglaries, crimes against persons, child pornography, and identity theft.

07003262

In July, 2007 Your Affiant received information from the Department of Homeland Security, Immigration Customs Enforcement Division. In November 2005 special agents with the Cleveland office of the Department of Homeland Security received information related to the possession and/or distribution of child pornography. Agents were lead to believe that Lee Sly of North Royalton Ohio had received child pornography via an email.

In January 2007, agents received additional information from the Orland Park, IL Police Department. Officers discovered Richard Darkey was involved in trading child pornography via the Internet. Darkey received an image of child pornography from the screen name "SIRIOUTS" identified as Lee Sly.

On March 1, 2007 agents served America Online with a federal search warrant for Sly's email account information. A further examination of his account revealed 125 other individuals engaged in trading child pornography (Reference Attachment). The investigative leads contained at least one image or movie file of child pornography received, forwarded, and/or traded by each (target) January and February of 2007. The America Online search warrant results indicated that Timothy Craig was a suspect in this investigation. The records indicated the following:

Message # 223 in Sly's sent folder.

NAPA SHERIFF'S DEPARTMENT  
CONTROLLED DOCUMENT

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RELEASED BY \_\_\_\_\_  
DATE \_\_\_\_\_

Based on this information Special Agent Charles H. Demore summoned records from Pacific Gas & Electric for records of service as 3271 Beard Road, Napa, California, 94015. Those records indicate a customer name of "Tim Craig" with a telephone number of (707)257-1282.

Your Affiant further conducted a records check and discovered Timothy Charles Craig (08.03.1958) residing at 3271 Beard Road, Napa, California is a PC290 registered sex offender with the California Department of Justice.

Your Affiant requests a warrant be issued for the following:

THE PREMISES at 3271 Beard Road, Napa, California, 94558; further described as a two-story apartment complex with peach colored, stucco exterior, and off white wood trim, and the numbers 3271 affixed on the outside of the residence, to the left of the off white wood front door; including all rooms, attics, basements, and other parts therein, the surrounding grounds and any garages, storage rooms, trash containers, and outbuildings of any kind located thereon.



THE VEHICLE described as a 2006, Jeep, Laredo, silver bearing California license # 5P5P033 including containers of any kind within the vehicle.

07003262

THE VEHICLE described as a 2005, Ford bearing California license # 5TMV102 including containers of any kind within the vehicle.

JONES, #175

THE PERSON of Timothy Charles Craig, described as a male, white, 6 ft 4 inches tall, weighing approximately 265 pounds, with red hair, hazel eyes, born on 09.03.1958, with California drivers license # N4589759.

Child pornography, including message # 223, in Craig's inbox, including records, images, and videos whether stored on paper, on magnetic media such as tape, cassette, disk, diskette or on memory storage devices such as optical disks, programmable instruments such as telephones, "electronic calendar/address books" calculators, or any other storage media, together with indicia of use, ownership, possession, or control of such records.

RECEIVED TO  
RELEASED BY  
DATE  
NAPA SHERIFF'S DEPARTMENT  
CONTROLLED DEPOSITION  
NOT TO BE DUPLICATED

Electronic data processing and storage devices, computers and computer systems, such as central processing units, internal and peripheral storage devices such as fixed disks, external hard disks, floppy disk drives and diskettes, tape drives and tapes, optical storage devices or other memory storage devices; peripheral input/output devices such as keyboards, printers, video display monitors, optical readers and related communication devices such as acoustic or electrical modems, associated telephone sets, speed dialers, or other controlling devices, plotters, software to run programs, connecting cables and plugs, peripherals such as joysticks, or other input devices, scanners, writing pads, manuals, power backup devices, connecting switches, power sources, telephones and telephone cables, and interface devices.

All of the above records, whether stored on paper, on magnetic media such as tape, cassette, disk, diskette or on memory storage devices such as optical disks, programmable instruments such as telephones, "electronic calendar/address books" calculators, or any other storage media, together with indicia of use, ownership, possession, or control of such records.

Computing or data processing software, stored on any type of medium such as: hard disks, floppy disks, CD-R's, CD-RW's, DVD's, cassette tapes, integral RAM or ROM units, or other permanent or transient storage medium.

Computer or data processing literature, such as instruction books, manuals or listed computer programs in whole or in part.

Examination and search of computers and computer system components such as: CPU central processing units, internal and peripheral storage devices such as internal or external hard drives, removable storage devices and disks/hard drives, floppy disk drives and diskettes, CD-R, CD-RW, DVD drives and disks, tape drives and tapes, optical storage devices or other memory storage devices, integral RAM or ROM devices; peripheral input/output devices such as keyboards, touch pads, printers, scanners, plotters, cameras, video

such as acoustic or electric modems, or other controlling devices such as diskettes, CD-R, CD-RW, DVD disks, power back-up devices, connecting switches, interface devices, software to run programs, connecting cables, switches, power sources, and plugs.

07003262

Examination and search of all of the above components is for files, data, images, software, operating systems, deleted files, system configurations, drive and disk configurations, date and time, files, and slack space, for evidence.

It is your Affiant's experience that computer system forensic examinations and searches cannot be completed within the ten days in which the Search Warrant must be served and the Return to Search Warrant filed with the Search Warrant. It is requested that the 10-day requirement be waived to provide your Affiant ample time to have it processed and comply with the Search Warrant in a timely manner. The Return to Search Warrant and Search Warrant will be filed promptly upon completion of the computer system forensic examination and search.

Any articles of personal property tending to establish the identity of persons who have dominion and control over the premises, automobiles, or items to be seized, including rent receipts, utility bills, telephone bills, miscellaneous addressed mail, personal letters, personal identification, keys, purchase receipts, sales receipts, tax statements, payroll check stubs, photographs, vehicle ownership certificates or "pink slips," and vehicle registration slips.

Your Affiant requests that during the execution of this search warrant that law enforcement officers assigned representatives are authorized to video tape and / or photograph / digital images the site, evidence at the site and / or people or persons at the site.

DEPARTMENT OF JUSTICE  
NAPA STATE ATTORNEY'S OFFICE  
CONTROLLED DOCUMENT  
NOT TO BE DUPLICATED

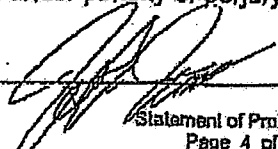
Through experience and training, your affiant knows those individuals engaged in the possession, and distribution of child pornography will store those files in various locations, and on various forms of digital media including computer hard drives, and external storage locations. These individuals will often obtain, trade, and distribute these pornographic images via an Internet connection, provided by an Internet Service Provider.

YOUR AFFIANT requests that a Search Warrant be issued based upon the aforementioned facts, for the seizure of said property, or any part thereof, between the hours of 7:00 A.M. and 10:00 P.M., good cause being shown thereof, and the same be brought before this Magistrate or retained subject to the order of the court, or of any court in which the offense(s) in respect to which the property of things taken; triable, pursuant to Section 1536 of the Penal Code,

Items attached and incorporated by Reference: YES ☒ NO ☒

YOUR AFFIANT certify (declare) under penalty of perjury that the foregoing is true and correct.

Executed at Napa, California





Date: 8/7/2007 at 1115 (A.M.) P.M.

Reviewed by: \_\_\_\_\_ Date: \_\_\_\_\_ at NSD A.M. / P.M.

**07003262**

**J JONES, #175**

NAPA SHERIFF'S DEPARTMENT  
CONTROLLED DOCUMENT  
NOT TO BE DUPLICATED  
RELEASED TO \_\_\_\_\_  
RELEASED BY \_\_\_\_\_  
DATE \_\_\_\_\_

**ATTACHMENT "B"**

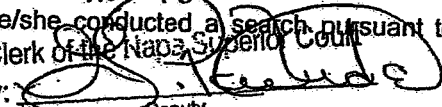
104

STATE of CALIFORNIA - COUNTY of NAPA  
**RETURN TO SEARCH WARRANT**

AUG 16 2007

Police Officer / Investigator Joseph Jones, being sworn, says that he/she conducted a search pursuant to the Search Warrant described below:

Issuing Magistrate Judge John Anton

By:   
 Deputy

Magistrate's Court : Superior Court of California, County of Napa.

Date of Issuance : August 7th, 2007

Date of Service : August 7th, 2007

and searched the following location(s), vehicle(s), and person(s):

THE PREMISES at 3271 Beard Road, Napa, California, 94558; further described as a two-story apartment complex with peach colored, stucco exterior, and off white wood trim, and the numbers 3271 affixed on the outside of the residence, to the left of the off white wood front door; including all rooms, attics, basements, and other parts therein, the surrounding grounds and any garages, storage rooms, trash containers, and outbuildings of any kind located thereon.

THE VEHICLE described as a 2006, Jeep, Lerado, silver bearing California license # 5PSH633 including containers of any kind within the vehicle.

THE VEHICLE described as a 2005, Ford bearing California license # 5TMV102 including containers of any kind within the vehicle.

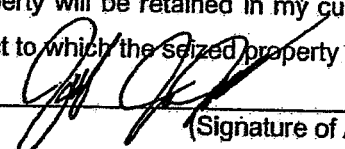
THE PERSON of Timothy Charles Craig, described as a male, white, 6 ft 4 inches tall, weighing approximately 255 pounds, with red hair, hzl eyes, born on 09.03.1958, with California drivers license #: N4589759.

and Seized the Items\*

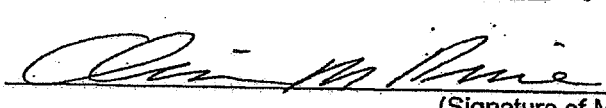
☒ described in the attached and incorporated inventory.

☐ described below :

I further swear that this is a true and detailed account of all the property taken by me pursuant to the search warrant, and the pursuant to Penal Code Sections 1528 and 1536 this property will be retained in my custody, subject to the order of this court or of any other court in which the offense in respect to which the seized property is triable.

  
 (Signature of Affiant)

Sworn to and Subscribed before me this 16 day of August, 2007, at 2:38 A.M./P.M.

  
 (Signature of Magistrate)

Judge of the Superior Court of California, County of Napa.

\_\_\_\_\_  
 (Magistrate's Printed Name)

\* List all items seized, including those not specifically listed on the Search Warrant

Return to Search Warrant

Case Report # NSD07000000

T

# NAPA COUNTY SHERIFF'S DEPARTMENT PROPERTY RECORD

2 DATE OF THIS REPORT 8-8-07		3 CRIME CODE 311.11 PC		5 PAGE 1 OF 3	
6 LOCATION PROPERTY COLLECTED 3771 BEARD ROAD				7 <input type="checkbox"/> FELONY <input type="checkbox"/> MISD. <input type="checkbox"/> ADULT <input type="checkbox"/> JUVENILE <input type="checkbox"/> ARREST <input type="checkbox"/> FOUND PROPERTY <input type="checkbox"/> CITATION <input type="checkbox"/> OTHER	
8 VICTIM/OWNER/SUSPECT/FINDER/OTHER 1. CLARK, TIMOTHY		9 D.O.B.		10 ADDRESS 3271 BEARD, NAPA	
13 VICTIM/OWNER/SUSPECT/FINDER/OTHER 2.		14 D.O.B.		15 ADDRESS	
18 VICTIM/OWNER/SUSPECT/FINDER/OTHER 3.		19 D.O.B.		20 ADDRESS	
23 VICTIM/OWNER/SUSPECT/FINDER/OTHER 4.		24 D.O.B.		25 ADDRESS	
27 1. PROPERTY CODE  E = EVIDENCE  C = IN CUSTODY  N = NOT IN STORAGE		28 2. PROPERTY TYPE  A = ASSET FORFEITURE O = OTHER C = CONTRABAND R = RECOVERED E = EVIDENCE S = STOLEN F = FOUND W = SEARCH K = SAFEKEEPING WARRANT H = 8102 W & I (5150 GUNS)		29 COMMENTS: FIREARMS WANTS (10-29) HISTORY (10-28) TO BE ATTACHED BY OFFICER	
3. PROPERTY CATEGORIES					
A = AUTOMOTIVE B = BICYCLE C = CAMERA/PHOTO EQUIP D = DRUG/PARAPHERNALIA E = EQUIPMENT/TOOLS F = FIREARMS/WEAPONS G = TRACE EVIDENCE H = HOUSEHOLD GOODS I = INDICIA J = JEWELRY/WATCH/PRECIOUS METALS K = PHYSIOLOGICAL FLUIDS L = CLOTHING M = MUSICAL EQUIP N = CASSETTES O = OFFICE/COMPUTER EQUIP P = PERSONAL ACCESSORY R = RADIO/STEREO/SOUND S = SPORT/CAMPING EQUIP T = TELEVISION/VCR/VIDEO U = CONSUMABLES V = PHOTO LINE UP/PHOTOS W = WALLET/PURSE X = MONEY Y = OTHER Z = CREDIT CARDS					

TH 1	E	E	VHS TAPE KITCHEN COUNTER
TH 2	E	E	BLOW UP DOG, CHILD SIZED - FOUND IN KITCHEN CABINET ABOVE FRYER
TH 3			3 CD ROMS FOUND ON KITCHEN COUNTER
TH 4			"MICHAEL BACK" CD ROM - KITCHEN TABLE
TH 5			NIXON CAMERA
TH 6			CANON DIGITAL CAMERA
TH 7			JVC COMPACT VHS CAMERA

☐ NOTIFICATION OF RIGHTS This form constitutes notification of your rights according to law. Your signature is not an admission of responsibility, but indicates that you have received a copy of this notice. Please review the back of this sheet for an explanation of your rights.

☐ FOUND PROPERTY (Required by Cal. Civil Code 2080) I declare under penalty of perjury, that the listed items were found, that all items found have been surrendered and I do not know the identity of the true owner. Finder wishes to claim found property after 90 days: ☐ YES ☐ NO. ☒ X

SIGNATURE

DATE

WHITE - PROPERTY ROOM

CANARY - MASTER FILE

PINK - PROPERTY ROOM

GOLDENROD - RECEIPT / NOTIFICATION OF RIGHTS.

## NAPA COUNTY SHERIFF'S DEPARTMENT

## CONTINUATION

## PROPERTY RECORD

45 DATE OF THIS REPORT 8/8/07		46 CRIME CODE		47 PAGE 2 OF 3		PROPERTY ROOM ONLY	
48 VICTIM/OWNER/SUSPECT (circle one)				49 D.O.B.		50 PHONE	
51 ADDRESS 3271 BEARD RD.				52 PID #			
EVID #	CODE	TYPE	QTY	ARTICLE	BRAND	MODEL	PROPERTY ROOM ONLY
1				TOSHIBA SATELLITE M15 SN X6109530Q			
				LIVING ROOM STAND - w/ WIRELESS CARD			
2				MISC CD'S LIVING ROOM FLOOR			
3				MISC 3 1/4" floppy DISCS L/R FLOOR			
4				GROSSY PRINTS "JETSON'S" UNDER L/R TABLE			
5				PORNOGRAPHY CATALOGUE - BLACK BAG D/R			
6				ROLL 35mm FILM EXPOSED COFFEE			
7				MISC TEEN RELATED PORNOGRAPHY L/R FLOOR NEAR OR UNDER COUCH			
8				WOOD CONTAINER w/ MARIJUANA			
9				CD SPOOL w/ MISC CD-R's L/R SHELVES			
10				BOXES w/ PORN DVD'S BEDROOM CLOSET			
11				PORNOGRAPHY BEDROOM FLOOR			
12				GIRLS PANTIES & HAT			
COLLECTING OFFICER: [Signature] PROPERTY ROOM: [Signature] LOCKER NO: [Signature] RETURN TO: [Signature]							

WHITE - PROPERTY ROOM



## EXHIBIT C - ATTACHMENT 3

## NAPA COUNTY SHERIFF'S DEPARTMENT

## CONTINUATION

## PROPERTY RECORD

PROPERTY ROOM ONLY
--------------------

45 DATE OF THIS REPORT 8-8-07		46 CRIME CODE		47 PAGE 3 OF 3		PROPERTY ROOM ONLY	
48 VICTIM/OWNER/SUSPECT (circle one)				49 D.O.B.		50 PHONE	
51 ADDRESS 3271 BEARD ROAD				52 PID #			
53 EVID. #	54 CODE	55 TYPE	56 CAT	57 ARTIFACT	58 BRAND	59 MODEL	60 SERIAL #
20				GLASS MARIJUANA PIPE w/ BURNT VEG.			
				L/R COFFEE TABLE			
21				2 WOOD BOXES, 2 BAGGIES LOOSE MARIJUANA			
				CONT MARIJUANA, PIPES, WHITE RESIDUE L/R COUCH			
22				VHS TAPES BEDROOM & CLOSET			
23				SOFT PS 1 SIN P0227491766 w/ MEM CARD			
				L/R BY TV			
24				RED BOX CONT DIGITAL MEDIA, CD'S			
				L/R TV			
25				VHS TAPES, DVIDS TV STAND L/R			
26				INDICIA KITCHEN			
27				"GRASS ROOTS" CD- CONT BLANK CD-R			
				L/R TABLE			
28				POLAROID NAKED BOY - NEGATIVES			
				KITCHEN TABLE			
29				SOFT CD-R L/R FISHBANK			
30				YELLOW PAD w/ HANDWRITTEN STORY			
				BAGGIES #8 STORAGE			
COLLECTOR'S NAME: J. P. COOK PROPERTY # 8-8-07 DATE: 8-8-07 WHITE - PROPERTY ROOM							

## Incident / Investigation Report

Napa Sheriff's Department

OCA: NSD07-003262

## Additional Property List

Status Codes S = Stolen R = Recovered D = Damaged Z = Seized B = Burned C = Counterfeit / Forged F = Found U = Unknown (Check "OJ" column if recovered for other jurisdiction)								
Victim #	UCR	Status	Value	OJ	QTY	Property Description	Make/Model	Serial Number
	07	EVI -	\$1.00		1.00	Th13 35mm Film Roll, Exposed		
	07	EVI -	\$1.00		1.00	Th14 Misc Teen Related Porn		
	07	EVI -	\$1.00		1.00	Th16 Cd Spool With Blank Or Audio		
	07	EVI -	\$1.00		1.00	Th17 2 Boxes Cont Porn Dvd's		
	11	EVI -	\$1.00		1.00	Th18 Child Rape Story, Porn, Dvd		
	06	EVI -	\$1.00		1.00	Th19 Womens Panties, Girls Ski Hat		
	07	EVI -	\$1.00		1.00	Th22 Two Vhs Tapes		
	07	EVI -	\$1.00		1.00	Th23 Sony Playstation W/Memory	SONY/SCPH-	P0227491766
	26	EVI -	\$1.00		1.00	Th24 Misc Cds, Computer/Tv Cables		
	26	EVI -	\$1.00		1.00	Th25 Misc Dvd's And Vhs Tapes		
	11	EVI -	\$1.00		1.00	Th26 Indicia Tim Craig		
	07	EVI -	\$1.00		1.00	Th27 Audio Cd Grass Roots		
	1P	EVI -	\$1.00		1.00	Th28 Polaroid Naked Boy Film		
	07	EVI -	\$1.00		1.00	Th29 Cd-Rw Blank Label		
	11	EVI -	\$1.00		1.00	Th30 Yellow Legal Pad W/Writings		

NAPA SHERIFF'S DEPARTMENT  
 CONTROLLED DOCUMENT  
 NOT TO BE DUPLICATED  
 RELEASED TO \_\_\_\_\_  
 RELEASED BY \_\_\_\_\_  
 DATE \_\_\_\_\_

# NAPA COUNTY SHERIFF'S DEPARTMENT PROPERTY RECORD

2 DATE OF THIS REPORT 8-8-07		3 CRIME CODE 311.11 PC		5 PAGE 1 OF 3	
6 LOCATION PROPERTY COLLECTED 3771 BEARD ROAD				<input type="checkbox"/> FELONY <input type="checkbox"/> MISD. <input type="checkbox"/> ADULT <input type="checkbox"/> JUVENILE <input type="checkbox"/> ARREST <input type="checkbox"/> FOUND PROPERTY <input type="checkbox"/> CITATION <input type="checkbox"/> OTHER	
8 VICTIM/OWNER/SUSPECT/FINDER/OTHER 1. C. R. G. J. MOTHY		9 D.O.B.		10 ADDRESS 3771 BEARD, NAPA	
13 VICTIM/OWNER/SUSPECT/FINDER/OTHER 2.		14 D.O.B.		15 ADDRESS	
18 VICTIM/OWNER/SUSPECT/FINDER/OTHER 3.		19 D.O.B.		20 ADDRESS	
23 VICTIM/OWNER/SUSPECT/FINDER/OTHER 4.		24 D.O.B.		25 ADDRESS	
27 1. PROPERTY CODE E = EVIDENCE D = IN CUSTODY N = NOT IN STORAGE		28 2. PROPERTY TYPE A = ASSET FORFEITURE C = CONTRABAND E = EVIDENCE F = FOUND K = SAFEKEEPING H = B102 W & I (5150 GUNB) O = OTHER R = RECOVERED S = STOLEN W = SEARCH WARRANT		29 3. PROPERTY CATEGORIES A = AUTOMOTIVE B = BICYCLE C = CAMERA/PHOTO EQUIP D = DRUG/PARAPHERNALIA E = EQUIPMENT/TOOLS F = FIREARMS/WEAPONS G = TRACE EVIDENCE H = HOUSEHOLD GOODS I = INDICIA J = JEWELRY/WATCH/PRECIOUS METALS K = PHYSIOLOGICAL FLUIDS L = CLOTHING M = MUSICAL EQUIP N = CASSETTES O = OFFICE/COMPUTER EQUIP P = PERSONAL ACCESSORY R = RADIO/STEREO/SOUND S = SPORT/CAMPING EQUIP T = TELEVISION/VCR/VIDEO U = CONSUMABLES V = PHOTO LINE UP/PHOTOS W = WALLET/PURSE X = MONEY Y = OTHER Z = CREDIT CARDS	
30 COMMENTS, FIREARMS WANTS (10-29) HISTORY (10-28) TO BE ATTACHED BY OFFICER					
31 1. E E VHS TAPE KITCHEN COUNTER					
32 2. E E BLOW UP DOG, CHILD SIZED - FOUND IN KITCHEN CABINET ABOVE Fridge					
33 3. CD ROMS FOUND ON KITCHEN COUNTER					
34 4. "NIGHTLARK" CD ROM - KITCHEN COUNTER					
35 5. NIKON CAMERA					
36 6. CANON DIGITAL CAMERA					
37 7. JVC COMPACT VHS CAMERA					
<input type="checkbox"/> NOTIFICATION OF RIGHTS This form constitutes notification of your rights according to law. Your signature is not an admission of responsibility, but indicates that you have received a copy of this notice. Please review the back of this sheet for an explanation of your rights.					
<input type="checkbox"/> FOUND PROPERTY (Required by Cal. Civil Code 2080) I declare under penalty of perjury, that the listed items were found, that all items found have been inventoried and I do not know the identity of the true owner. Finder wishes to claim found property after 90 days: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO.					
SIGNATURE _____ DATE _____ WHITE - PROPERTY ROOM    CANARY - MASTER FILE    PINK - PROPERTY ROOM    GOLDENROD - RECEIPT/NOTIFICATION OF RIGHTS					



NAPA COUNTY SHERIFF'S DEPARTMENT  
CONTINUATION

## PROPERTY RECORD

46 DATE OF THIS REPORT 8/8/07		48 CRIME CODE		47 PAGE 2 OF 3		PROPERTY ROOM ONLY	
49 VICTIM/OWNER/SUSPECT (circle one)				49 D.O.B.		50 PHONE	
51 ADDRESS 3271 BEARD RD.				52 P.O. #			
53 EVID. #	54 ROOM	55 TYPE	56 CAT.	57 ARTICLE	58 BRAND	59 MODEL	60 SERIAL NO.
115				TOSHIBA SATELLITE M115			SN X61099300
				LIVING ROOM STAND - W/ WIRELESS CARD			
116				MISC. CD'S			LIVING ROOM FLOOR
117				MISC 3 1/4" floppy DISCS			L/R FLOOR
118				GROSH PRINTS "JERSON'S"			UNDER L/R
				TABLE			
119				PORNOGRAPHY CARTRIDGE - BLACK BAG			
				D/R			
120				ROLL 35mm FILM EXPOSED COFFEE			
				TABLE			
121				MISC TEEN RELATED PORNOGRAPHY			L/R
				FLOOR NEAR OR UNDER COUCH			
122	21			WOOD CONTAINER W/ MARIJUANA			
123				CD STOR W/ MISC CD-R'S			L/R SHELF
124				BOXES W/ PORN DVD'S			BEDROOM CLOSET
125				PORNOGRAPHY			BEDROOM FLOOR
126				GIRLS PICTURES & HAT			
52 COLLECTING OFFICER J. HANCOCK #57		53 PROPERTY IDENTIFIED		54 DATE 8/8/07		55 APPROVED BY	

NAPA SHERIFF'S DEPARTMENT  
CONTROLLED DOCUMENT  
NOT TO BE DUPLICATED  
RELEASED TO \_\_\_\_\_  
RELEASED BY \_\_\_\_\_  
DATE \_\_\_\_\_

WHITE - PROPERTY ROOM

CANARY - MASTER FILE

PINK - PROPERTY ROOM

GOLDENROD - RECEIPT



NAPA COUNTY SHERIFF'S DEPARTMENT  
CONTINUATION

## PROPERTY RECORD

46 DATE OF THIS REPORT 8-8-07		48 CHIME CODE		47 PAGE 3 OF 3		PROPERTY ROOM ONLY	
49 VICTIM/OWNER/SUBJECT (check one)				49 D.O.B.		50 PHONE	
51 ADDRESS 3271 BEARD ROAD				52 PID #			
53 EVID #	54 CODE	55 TYPE	56 CAT	57 ARTICLE	58 BRAND	59 MODEL	60 SERIAL NO
126				GLASS MARIJUANA PIPE w/ BURNT VEG			
				L/R COFFEE TABLE			
15				2 WOOD BOXES, 2 BAGGIES LOOSE MARIJUANA			
				CONT MARIJUANA, PIPES, WHITE RESIDUE L/R COUCH			
16				2 VHS TAPES BEDROOM & CLOSET			
17				SOFT PS 1 SIN P0227491766 w/ MEN CARD			
				L/R BY TV			
21				RED BOX CONT DIGITAL MEDIA, CD'S			
				L/R TV			
25				VHS TAPES, DVD'S TV STAND L/R			
26				INDICA KITCHEN			
27				"Grass Roots" CD - CONT			
				L/R TABLE			
28				POLAROID NAKED BOY - NEGATIVE			
				KITCHEN TABLE			
29				SOFT CD-R L/R FISHBANK			
30				YELLOW PAD w/ HANDWRITTEN STORY			
				CARPORT #8 STORAGE			
61 COLLECTING OFFICER N. PARSONS		62 PROPERTY DELIVERED TO		63 LOCKED NO		64 DATE 8-7-07	
65 APPROVED BY		66 DATE		67		68	

NAPA SHERIFF'S DEPARTMENT  
UNCONTROLLED DOCUMENT  
NOT TO BE REPRODUCEDRELEASED TO  
RELEASED BY  
DATE

WHITE - PROPERTY ROOM

CANARY - MASTER FILE

PINK - PROPERTY ROOM

GOLDENROD - RECEIPT

STATE of CALIFORNIA - COUNTY of NAPA NSD # 3262

# RETURN TO SEARCH WARRANT

AUG 16 2007

Police Officer / Investigator Joseph Jones, being sworn, says that he/she conducted a search pursuant to the Search Warrant described below:  
 Issuing Magistrate Judge John Anton  
 Magistrate's Court : Superior Court of California, County of Napa.  
 Date of Issuance : August 7th, 2007 Date of Service : August 7th, 2007  
 and searched the following location(s), vehicle(s), and person(s):

THE PREMISES at 3271 Beard Road, Napa, California, 94558; further described as a two-story apartment complex with peach colored, stucco exterior, and off white wood trim, and the numbers 3271 affixed on the outside of the residence, to the left of the off white wood front door; including all rooms, attics, basements, and other parts therein, the surrounding grounds and any garages, storage rooms, trash containers, and outbuildings of any kind located thereon.

THE VEHICLE described as a 2006, Jeep, Lerado, silver bearing California license # 6PSH633 including containers of any kind within the vehicle.

THE VEHICLE described as a 2005, Ford bearing California license # 5TMV102 including containers of any kind within the vehicle.

THE PERSON of Timothy Charles Craig, described as a male, white, 6 ft 4 inches tall, weighing approximately 255 pounds, with red hair, hazel eyes, born on 09.03.1958, with California drivers license #: N4589759.

## and Seized the Items\*

- ☒ described in the attached and incorporated inventory.  
☐ described below :

I further swear that this is a true and detailed account of all the property taken by me pursuant to the search warrant, and the pursuant to Penal Code Sections 1528 and 1536 this property will be retained in my custody, subject to the order of this court or of any other court in which the offense in respect to which the seized property is triable.

(Signature of Affiant)

Sworn to and Subscribed before me this 16 day of August, 2007, at 2:38 A.M./P.M.

(Signature of Magistrate)

Judge of the Superior Court of California, County of Napa.

(Magistrate's Printed Name)

NAPA SHERIFF'S DEPARTMENT  
 CONTROLLED DOCUMENT  
 NOT TO BE DUPLICATED  
 RELEASED TO \_\_\_\_\_  
 RELEASED BY \_\_\_\_\_  
 DATE \_\_\_\_\_

\* List all items seized, including those not specifically listed on the Search Warrant

# NAPA COUNTY SHERIFF'S DEPARTMENT PROPERTY RECORD

NSD #

2 DATE OF THIS REPORT 8-8-07		3 CRIME CODE 311.11 PC		6 PAGE 1 OF 3	
8 LOCATION PROPERTY COLLECTED 3771 BEARD ROAD		7 FELONY MISC.		9 ADULT JUVENILE	
10 VICTIM/OWNER/SUSPECT/FINDER/OTHER 1. CLARENCE J. MONTY		11 D.O.B.		12 ADDRESS 3271 BEARD NAPA	
13 VICTIM/OWNER/SUSPECT/FINDER/OTHER 2.		14 D.O.B.		15 ADDRESS	
16 VICTIM/OWNER/SUSPECT/FINDER/OTHER 3.		17 D.O.B.		18 ADDRESS	
19 VICTIM/OWNER/SUSPECT/FINDER/OTHER 4.		20 D.O.B.		21 ADDRESS	
22 1. PROPERTY CODE E = EVIDENCE G = IN CUSTODY N = NOT IN STORAGE		23 2. PROPERTY TYPE A = ASSET FORFEITURE C = CONTRABAND E = EVIDENCE F = FOUND K = SAFEKEEPING H = DIOZ W A I (6160 GUNS) O = OTHER R = RECOVERED S = STOLEN W = SEARCH WARRANT		24 COMMENTS: FIREARMS WANTS (10-29) HISTORY (10-29) TO BE ATTACHED BY OFFICER NAPA SHERIFF'S DEPARTMENT CONTROLLED DOCUMENT NOT TO BE DUPLICATED RELEASED TO RELEASED BY	
3. PROPERTY CATEGORIES A = AUTOMOTIVE B = BICYCLE C = CAMERA/PHOTO EQUIP D = DRUG/PARAPHERNALIA E = EQUIPMENT/TOOLS F = FIREARMS/WEAPONS G = TRACE EVIDENCE H = HOUSEHOLD GOODS I = INDICIA J = JEWELRY/WATCH/PRECIOUS METALS K = PHYSIOLOGICAL FLUIDS L = CLOTHING M = MUSICAL EQUIP N = CASSETTES O = OFFICE/COMPUTER EQUIP P = PERSONAL ACCESSORY R = RADIO/STEREO/SOUND S = SPORT/CAMPING EQUIP T = TELEVISION/VCR/VIDEO U = CONSUMABLES V = PHOTO LINE UP/PHOTOS W = WALLET/PURSE X = MONEY Y = OTHER Z = CREDIT CARDS					
E E VHS TAPE KITCHEN COUNTER					
E E BLOW UP DOG CALLED SIZED - FOUND					
N KITCHEN CABINET ABOVE FLOOR					
3 CD ROMS FOUND ON KITCHEN COUNTER					
"NICKELBACK" CD ROM - KITCHEN TABLE					
NIKON CAMERA					
CANON DIGITAL CAMERA					
JVC COMPACT VHS CAMERA					
<input type="checkbox"/> NOTIFICATION OF RIGHTS This form constitutes notification of your rights according to law. Your signature is not an admission of responsibility, but indicates that you have received a copy of this notice. Please review the back of this sheet for an explanation of your rights. <input type="checkbox"/> FOUND PROPERTY (Required by Cal. Civil Code 2080) I declare under penalty of perjury, that the listed items were found, that all items found have been surrendered and I do not know the identity of the true owner. Finder wishes to claim found property after 90 days: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO. X SIGNATURE _____ DATE _____					

WHITE - PROPERTY ROOM

CANARY - MASTER FILE

PINK - PROPERTY ROOM

GOLDEN ROD - RECEIPT / NOTIFICATION OF RIGHTS



PROPERTY RECORD

48 DATE OF THIS REPORT 8/8/07		49 CRIME CODE		57 PAGE 2 OF 3		PROPERTY ROOM ONLY	
48 VICTIM/OWNER/SUSPECT (circle name)			49 D.O.B.		58 PHONE		59 JONES, #175
61 ADDRESS 3271 BEARD RD.				62 P.O. #			
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NAPA COUNTY SHERIFF'S DEPARTMENT

CONTINUATION

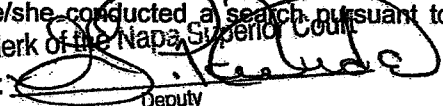
## PROPERTY RECORD

46 DATE OF THIS REPORT 8-8-07		48 CRIME CODE		47 PAGE 3 OF 3		PROPERTY ROOM ONLY	
49 VICTIM/OWNER/SUSPECT (include name)				48 D.O.B.		50 PHONE	
51 ADDRESS 3271 BEARD ROAD				52 MO #		NSD # 07003262	
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941	942	943	944	945	946	947	948
949	950	951	952	953	954	955	956
957	958	959	960	961	962	963	964
965	966	967	968	969	970	971	972
973	974	975	976	977	978	979	980
981	982	983	984	985	986	987	988
989	990	991	992	993	994	995	996
997	998	999	1000	1001	1002	1003	1004
1005	1006	1007	1008	1009	1010	1011	1012
1013	1014	1015	1016	1017	1018	1019	1020
1021	1022	1023	1024	1025	1026	1027	1028
1029	1030	1031	1032	1033	1034	1035	1036
1037	1038	1039	1040	1041	1042	1043	1044
1045	1046	1047	1048	1049	1050	1051	1052
1053	1054	1055	1056	1057	1058	1059	1060
1061	1062	1063	1064	1065	1066	1067	1068
1069	1070	1071	1072	1073	1074	1075	1076
1077	1078	1079	1080	1081	1082	1083	1084
1085	1086	1087	1088	1089	1090	1091	1092
1093	1094	1095	1096	1097	1098	1099	1100
1101	1102	1103	1104	1105	1106	1107	1108
1109	1110	1111	1112	1113	1114	1115	1116
1117	1118	1119	1120	1121	1122	1123	1124
1125	1126	1127	1128	1129	1130	1131	1132
1133	1134	1135	1136	1137	1138	1139	1140
1141	1142	1143	1144	1145	1146	1147	1148
1149	1150	1151	1152	1153	1154	1155	1156
1157	1158	1159	1160	1161	1162	1163	1164
1165	1166	1167	1168	1169	1170	1171	1172
1173	1174	1175	1176	1177	1178	1179	1180
1181	1182	1183	1184	1185	1186	1187	1188
1189	1190	1191	1192	1193	1194	1195	1196
1197	1198	1199	1200	1201	1202	1203	1204
1205	1206	1207	1208	1209	1210	1211	1212
1213	1214	1215	1216	1217	1218	1219	1220
1221	1222	1223	1224	1225	1226	1227	1228
1229	1230	1231	1232	1233	1234	1235	1236
1237	1238	1239	1240	1241	1242	1243	1244
1245	1246						



STATE of CALIFORNIA - COUNTY of NAPA  
**RETURN TO SEARCH WARRANT**

AUG 16 2007

Police Officer / Investigator Joseph Jones, being sworn, says that he/she conducted a search pursuant to the  
Search Warrant described below:  
Clerk of the Napa Superior Court  
By:  Deputy

Issuing Magistrate Judge John Anton

Magistrate's Court : Superior Court of California, County of Napa.

Date of Issuance : August 7th, 2007

Date of Service : August 7th, 2007

and searched the following location(s), vehicle(s), and person(s):

THE PREMISES at 3271 Beard Road, Napa, California, 94558; further described as a two-story apartment complex with peach colored, stucco exterior, and off white wood trim, and the numbers 3271 affixed on the outside of the residence, to the left of the off white wood front door; including all rooms, attics, basements, and other parts therein, the surrounding grounds and any garages, storage rooms, trash containers, and outbuildings of any kind located thereon.

THE VEHICLE described as a 2006, Jeep, Lerado, silver bearing California license # 5PSH633 including containers of any kind within the vehicle.

THE VEHICLE described as a 2005, Ford bearing California license # 5TMV102 including containers of any kind within the vehicle.

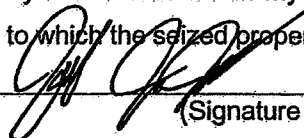
THE PERSON of Timothy Charles Craig, described as a male, white, 6 ft 4 inches tall, weighing approximately 255 pounds, with red hair, hzl eyes, born on 09.03.1958, with California drivers license #: N4589759.

and Seized the Items\*

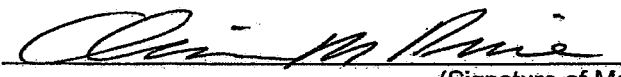
☒ described in the attached and incorporated inventory.

☐ described below :

I further swear that this is a true and detailed account of all the property taken by me pursuant to the search warrant, and the pursuant to Penal Code Sections 1528 and 1536 this property will be retained in my custody, subject to the order of this court or of any other court in which the offense in respect to which the seized property is triable.

  
(Signature of Affiant)

Sworn to and Subscribed before me this 16 day of August, 2007, at 2:38 A.M. / P.M.

  
(Signature of Magistrate)

Judge of the Superior Court of California, County of Napa.

(Magistrate's Printed Name)

\* List all items seized, including those not specifically listed on the Search Warrant

# NAPA COUNTY SHERIFF'S DEPARTMENT PROPERTY RECORD

1. DATE OF THIS REPORT 8-8-07		3. CRIME CODE 311.11 PC		5. CASE NUMBER 07-3262		6. PAGE 1 OF 3	
6. LOCATION PROPERTY COLLECTED 3271 BEARD ROAD				7. <input type="checkbox"/> FELONY <input type="checkbox"/> MISD.		8. <input type="checkbox"/> ADULT <input type="checkbox"/> JUVENILE	
8. VICTIM/OWNER/SUSPECT/FINDER/OTHER 1. CRAIG, TIMOTHY				9. D.O.B.		10. ADDRESS 3271 BEARD, NAPA	
13. VICTIM/OWNER/SUSPECT/FINDER/OTHER 2.				14. D.O.B.		15. ADDRESS	
18. VICTIM/OWNER/SUSPECT/FINDER/OTHER 3.				19. D.O.B.		20. ADDRESS	
23. VICTIM/OWNER/SUSPECT/FINDER/OTHER 4.				24. D.O.B.		25. ADDRESS	
27. 1. PROPERTY CODE  E = EVIDENCE  C = IN CUSTODY  N = NOT IN STORAGE		28. 2. PROPERTY TYPE  A = ASSET FORFEITURE O = OTHER  C = CONTRABAND R = RECOVERED  E = EVIDENCE S = STOLEN  F = FOUND W = SEARCH  K = SAFEKEEPING WARRANT  H = 8102 W & I (5150 GUNS)		29. COMMENTS: FIREARMS WANTS (10-29) HISTORY (10-28) TO BE ATTACHED BY OFFICER			
3. PROPERTY CATEGORIES  A = AUTOMOTIVE F = FIREARMS/WEAPONS K = PHYSIOLOGICAL FLUIDS P = PERSONAL ACCESSORY V = PHOTO LINE UP/PHOTOS B = BICYCLE G = TRACE EVIDENCE L = CLOTHING R = RADIO/STEREO/SOUND W = WALLET/PURSE C = CAMERA/PHOTO EQUIP H = HOUSEHOLD GOODS M = MUSICAL EQUIP S = SPORT/CAMPING EQUIP X = MONEY D = DRUG/PARAPHERNALIA J = INDICIA N = CASSETTES T = TELEVISION/VCR/VIDEO Y = OTHER E = EQUIPMENT/TOOLS J = JEWELRY/WATCH/PRECIOUS METALS O = OFFICE/COMPUTER EQUIP U = CONSUMABLES Z = CREDIT CARDS							
30. ITEM	31. CODE	32. TYPE	33. QUANTITY	34. ARTICLE	35. BRAND	36. MODEL	37. SERIALS
TH 1	E	E		VHS TAPE	KITCHEN COUNTER		
TH 2	E	E		BLOW UP DOLL, CHILD SIZED - FOUND			
				N KITCHEN CABINET ABOVE Fridge			
TH 3				3 CD ROMS FOUND ON KITCHEN			
				COUNTER			
TH 4				"NICKELBACK" CD ROM - KITCHEN			
				TABLE			
TH 5				NIKON CAMERA			
TH 6				CANON DIGITAL CAMERA			
TH 7				JVC COMPACT VHS CAMERA			
<input type="checkbox"/> NOTIFICATION OF RIGHTS This form constitutes notification of your rights according to law. Your signature is not an admission of responsibility, but indicates that you have received a copy of this notice. Please review the back of this sheet for an explanation of your rights.							
<input type="checkbox"/> FOUND PROPERTY (Required by Cal. Civil Code 2080) I declare under penalty of perjury, that the listed items were found, that all items found have been surrendered and I do not know the identity of the true owner. Finder wishes to claim found property after 90 days: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO. X							
SIGNATURE						DATE	
40. SHERIFF'S OFFICER T. HANCOCK				41. PROPERTY DELIVERED TO PINK - PROPERTY ROOM		42. APPROVED BY GOLDENROD - RECEIPT / NOTIFICATION OF RIGHTS.	

## NAPA COUNTY SHERIFF'S DEPARTMENT

## CONTINUATION

## PROPERTY RECORD

PAGE NUMBER 07-3262

45 DATE OF THIS REPORT 8/8/07		46 CRIME CODE		47 PAGE 2 OF 3		PROPERTY ROOM ONLY	
48 VICTIM/OWNER/SUSPECT (circle one)				49 D.O.B.		50 PHONE	
51 ADDRESS 3271 BEARD RD.				52 PID #			
53 EVID. #	54 CODE	55 TYPE	56 CAT.	ARTICLE	BRAND	MODEL	SERIAL NO.
TH9				TOSHIBA SATELITE M115 SN X61049300			
				LIVING ROOM STAND - w/ WIRELESS CARD			
TH9				MISC CD'S LIVING ROOM FLOOR			
TH10				MISC 3 1/4" floppy DISCS L/R FLOOR			
TH11				GROSSY PRINTS "JETSON'S" UNDER L/R TABLE			
TH12				PORNOGRAPHY CANAL - BLACK BAG D/R			
TH13				POW 35mm FILM EXPOSED COFFE			
				TABLE			
TH14				MISC TEEN RELATED PORNOGRAPHY L/R FLOOR NEAR OR UNDER COUCH			
TH15				WOOD CONTAINER w/ MARIJUANA			
TH16				CD SPOOL w/ MISC CD-R'S L/R SHELV			
TH17				BOXES w/ PORN DVD'S BEDROOM CLOSET			
TH18				PORNOGRAPHY BEDROOM FLOOR			
TH19				GIRLS PANTIES & HAT			
62 COLLECTING OFFICER J. HANCOCK #57		63 PROPERTY DELIVERED TO:		64 DATE 8/8/07		65 APPROVED BY	
66 LOCKER NO.		67 DATE		68 DATE		69 DATE	

WHITE - PROPERTY ROOM

CANARY - MASTER FILE

PINK - PROPERTY ROOM

GOLDENROD - RECEIPT



## NAPA COUNTY SHERIFF'S DEPARTMENT

## CONTINUATION

## PROPERTY RECORD

CASE NUMBER  
07-3262

45 DATE OF THIS REPORT 8-8-07		46 CRIME CODE		47 PAGE 3 OF 3		PROPERTY ROOM ONLY	
48 VICTIM/OWNER/SUSPECT (circle one)				49 D.O.B.		50 PHONE	
51 ADDRESS 3271 BEARD ROAD						52 PID #	
EVIDENCE NO.	CODE	TYPE	CAT.	ARTICLE	BRAND	MODEL	SERIAL NO.
H20				GLASS MARIJUANA PIPE w/ BURNT VEG.			
				L/R COFFEE TABLE			
H21				2 WOOD BOXES, 2 BAGGIES LOOSE MARIJUANA			
				CONT MARIJUANA, PIPES, WHITE RESIDUE L/R COUCH			
H22				2 VHS TAPES BEDROOM & CLOSET			
H23				SOFT PS 1 SIN P0227491766 w/ MEM CARD			
				L/R BY TV			
H24				RED BOX CONT DIGITAL MEDIA, CD'S			
				L/R TV			
H25				VHS TAPES, DVD'S TV STAND L/R			
H26				INDICIA KITCHEN			
H27				"GRASS ROOTS" CD - CONT BLANK CD-R			
				L/R TABLE			
H28				POLAROID NAKED BOY - NEGATIVES			
				KITCHEN TABLE			
H29				SOFT CD-R L/R FISHBANK			
H30				YELLOW PAD w/ HANDWRITTEN STORY			
				CARPET #8 STORAGE			
62 COLLECTING OFFICER HAWLOCK		63 PROPERTY DELIVERED TO:		LOCKER NO.		64 DATE 8-8-07	
65 APPROVED BY		66 DATE					

WHITE - PROPERTY ROOM

CANARY - MASTER FILE

PINK - PROPERTY ROOM

GOLDENROD - RECEIPT

STATE of CALIFORNIA, COUNTY of NAPA  
**SEARCH WARRANT AND AFFIDAVIT**  
**(AFFIDAVIT)**

SW NO. 10

AUG 16 2007

Clerk of the Napa Superior Court

Detective Joseph Jones declares under penalty of perjury that the facts expressed by him/her in the attached and incorporated **Statement of Probable Cause** are true and that based thereon he/she has probable cause to believe and does believe that the articles, property, and persons described below are lawfully seizable pursuant to Penal Code Section 1524, as indicated below, and are now located at the locations set forth below. Wherefore, Affiant requests that this Search Warrant be issued.

NIGHT SEARCH REQUESTED: YES ☐ NO ☒

**(SEARCH WARRANT)**

THE PEOPLE OF THE STATE OF CALIFORNIA TO ANY SHERIFF, POLICEMAN OR PEACE OFFICER IN THE COUNTY OF NAPA: proof by affidavit, under penalty of perjury, having been made before me by **Police Officer / Investigator Detective Joseph Jones** that there is probable cause to believe that the property or person described herein may be found at the location(s) set forth herein and that it is lawfully seizable pursuant to Penal Code Section 1524 as indicated below by "x"(s) in that it:

- ☐ was stolen or embezzled.
- ☐ was used as the means of committing a felony.
- ☒ is possessed by a person with the intent to use it as means of committing a public offense or is possessed by another to whom he or she may have delivered it for the purpose of concealing it or preventing its discovery.
- ☐ tends to show that a felony has been committed or that a particular person has committed a felony.
- ☒ tends to show that sexual exploitation of a child, in violation of Penal Code Section 311.3, or possession of matter depicting sexual conduct of a person under the age of 18 years, in violation of Section 311.11, has occurred or is occurring.
- ☐ there is a warrant to arrest the person.

**You are Therefore COMMANDED to SEARCH:** (premises, vehicles, persons)

THE PREMISES at **3271 Beard Road, Napa, California, 94558**; further described as a two-story apartment complex with peach colored, stucco exterior, and off **white wood** trim, and the numbers 3271 affixed on the outside of the residence, to the left of the off white wood front door; including all rooms, attics, basements, and other parts therein, the surrounding grounds and any garages, storage rooms, trash containers, and outbuildings of any kind located thereon.

THE VEHICLE described as a **2006, Jeep, Lerado, silver** bearing California license # **5PSH633** including containers of any kind within the vehicle.

THE VEHICLE described as a **2005, Ford** bearing California license # **5TMV102** including containers of any kind within the vehicle.

THE PERSON of **Timothy Charles Craig**, described as a **male, white, 6 ft 4 inches** tall, weighing approximately **255 pounds**, with **red hair, hzl eyes**, born on **09.03.1958**, with California drivers license #: **N4589759**.

**For the FOLLOWING PROPERTY or PERSON(s):**

Child pornography, including message # 223, in Craig's inbox, including records, images, and videos whether stored on paper, on magnetic media such as tape, cassette, disk, diskette or on memory storage devices such as optical disks, programmable instruments such as telephones, "electronic calendar/address books" calculators, or any other storage media, together with indicia of use, ownership, possession, or control of such records.



Electronic data processing and storage devices, computers and computer systems, such as central processing units, internal and peripheral storage devices such as fixed disks, external hard disks, floppy disk drives and diskettes, tape drives and tapes, optical storage devices or other memory storage devices; peripheral input/output devices such as keyboards, printers, video display monitors, optical readers and related communication devices such as acoustic or electrical modems, associated telephone sets, speed dialers, or other controlling devices, plotters, software to run programs, connecting cables and plugs, peripherals such as joysticks, or other input devices, scanners, writing pads, manuals, power backup devices, connecting switches, power sources, telephones and telephone cables, and interface devices.

All of the above records, whether stored on paper, on magnetic media such as tape, cassette, disk, diskette or on memory storage devices such as optical disks, programmable instruments such as telephones, "electronic calendar/address books" calculators, or any other storage media, together with indicia of use, ownership, possession, or control of such records.

Computing or data processing software, stored on any type of medium such as: hard disks, floppy disks, CD-R's, CD-RW's, DVD's, cassette tapes, integral RAM or ROM units, or other permanent or transient storage medium.

Computer or data processing literature, such as instruction books, manuals or listed computer programs in whole or in part.

Examination and search of computers and computer system components such as; CPU central processing units, internal and peripheral storage devices such as internal or external hard drives, removable storage devices and disks/hard drives, floppy disk drives and diskettes, CD-R, CD-RW, DVD drives and disks, tape drives and tapes, optical storage devices or other memory storage devices, integral RAM or ROM devices; peripheral input/output devices such as keyboards, touch pads, printers, scanners, plotters, cameras, video display monitors, modems, external data storage devices, optical readers and related communication devices such as acoustic or electrical modems, or other controlling devices such as diskettes, CD-R, CD-RW, DVD disks, power back-up devices, connecting switches, interface devices, software to run programs, connecting cables, switches, power sources, and plugs.

Examination and search of all of the above components is for files, data, images, software, operating systems, deleted files, system configurations, drive and disk configurations, date and time, unallocated and slack space, for evidence.

It is your Affiant's experience that computer system forensic examinations and searches cannot be completed within the ten days in which the Search Warrant must be served and the Return to Search Warrant filed with the Search Warrant. It is requested that the 10-day requirement be waived to provide your Affiant ample time to have it processed and comply with the Search Warrant in a timely manner. The Return to Search Warrant and Search Warrant will be filed promptly upon completion of the computer system forensic examination and search.

Any articles of personal property tending to establish the identity of persons who have dominion and control over the premises, automobiles, or items to be seized, including rent receipts, utility bills, telephone bills, miscellaneous addressed mail, personal letters, personal identification, keys, purchase receipts, sales

receipts, tax statements, payroll check stubs, photographs, vehicle ownership certificates or "pink slips," and vehicle registration slips.

AND TO SEIZE IT / THEM IF FOUND and bring it / them forthwith before me, or this court, at the courthouse of this court. This Search Warrant and Affidavit and attached and incorporated Statement of Probable Cause were sworn to as true under penalty of perjury and subscribed before me on this 7 day of July, 2007, at 11:15 A.M. P.M. Wherefore, I find probable cause for the issuance of this Search Warrant and do issue it.

*John N. Anton*  
(Signature of Magistrate)

KNOCK - NOTICE EXCUSED: YES ☐ NO ☒

NIGHT SEARCH APPROVED: YES ☐ NO ☒

Judge of the Superior Court of California, County of Napa

JOHN N. ANTON  
(Magistrate's Printed Name)

Reviewed by: \_\_\_\_\_ Date: \_\_\_\_\_ at \_\_\_\_\_ A.M. / P.M.

\_\_\_\_\_

**STATE of CALIFORNIA, COUNTY of NAPA,****ATTACHED and INCORPORATED****STATEMENT OF PROBABLE CAUSE**

Affiant declares under penalty of perjury that the following facts are true and that there is probable cause to believe, and Affiant does believe, that the designated articles, property, and persons are now in the described locations, including all rooms, buildings, and structures used in connection with the premises and buildings adjoining them, the vehicles and the persons:

Your affiant, Detective Joseph Jones, is employed as a full-time, sworn law enforcement officer for The Napa County Sheriff's Department and has been for the past 5 years. Your affiant has a total of 7 years of Law Enforcement experience.

During Your Affiant's tenure, Your Affiant has investigated numerous cases involving violent crimes, financial crimes, thefts, burglaries, computer- and communications-related crimes, and identity theft related crimes. On May 12, 1995 your affiant graduated from the Butte College Basic Law Enforcement Academy, your affiant has also obtained a basic and intermediate P.O.S.T. Certificate. Your Affiant has received 40 hours of training in the examination of subjects under the influence of narcotics and drugs. In addition Your Affiant completed an 8 hour course from the California Narcotics Officers Association in Narcotic Street Development, and 32 hours of instruction from the California Department of Justice in Informant Development and Maintenance. Your Affiant has received 60 hours of P.O.S.T. training from the Sacramento County Sheriff's Department in, Basic Crime Scene Investigation and Reconstruction. Your Affiant holds an Associate of Science Degree, in Administration of Justice from Napa Valley College.

Your Affiant has received 160 hours of P.O.S.T. training from the Contra Costa County Sheriff's Department training facility in Advanced Accident Reconstruction. Your Affiant also received an additional 80 hours of training from the California Highway Patrol in, Commercial Vehicle Enforcement.

Additionally, your affiant has received training in electronic crimes from the California Department of Justice and the Northern California Computer Crimes Task Force, including High Technology Computer Crime Investigation, and the investigation of Internet crimes. In November of 2000 Your Affiant received 8 hours of training from the Search Foundation in the Introduction to Internet Crime Investigations. In December of 2003 Your Affiant received 36 hours of instruction in High Technology and Computer Crime Investigations, from The California Department of Justice. In October of 2004, Your Affiant received 80 hours of instruction from The California Department of justice in Computer Digital Evidence Recovery. In February of 2005 Your Affiant received 80 hours of instruction from the California Department of Justice in, Computer Forensics. In August, 2005 Your Affiant received 84 hours of training from the California State University, Sacramento and the Institute of Criminal Investigations.

1 . Your affiant is currently assigned to the Napa County Sheriff's Department, Investigations Division, and is  
2 tasked with the investigation of crimes as they relate to the illegal use, abuse or theft of electronic service,  
3 technology, online fraud, computer equipment theft, general thefts/burglaries, crimes against persons, child  
4 pornography, and identity theft.

5  
6 In July, 2007 Your Affiant received information from the Department of Homeland Security, Immigration  
7 Customs Enforcement Division. In November 2005 special agents with the Cleveland office of the  
8 Department of Homeland Security received information related to the possession and/or distribution of child  
9 pornography. Agents were lead to believe that Lee Sly of North Royalton Ohio had received child  
10 pornography via an email.

11  
12 In January 2007, agents received additional information from the Orland Park, IL Police Department.  
13 Officers discovered Richard Darkey was involved in trading child pornography via the internet. Darkey  
14 received an image of child pornography from the screen name "SIRIOUT3", identified as Lee Sly.

15  
16 On March 1, 2007 agents served America Online with a federal search warrant for Sly's email account  
17 information. A further examination of his account revealed 125 other individuals engaged in trading child  
18 pornography (Reference Attachment). All the investigative leads contained at least one image or movie file  
19 of child pornography received, forwarded, and/or traded by each target in January and February of 2007.  
20 The America Online search warrant results indicated that Timothy Craig was a suspect in this investigation.  
21 The records indicated the following:

22  
23 "Limosdude"- Tim Craig, 3271 Beard Rd., Napa, CA, 94558, (707)257-1282.  
24 Message # 223 in Sly's "sent" folder.

25  
26 Based on this information Special Agent Charles H. Demore summonsed records from Pacific Gas &  
27 Electric for records of service as 3271 Beard Road, Napa, California, 94015. Those records indicate a  
28 customer name of "Tim Craig" with a telephone number of (707)257-1282.

29  
30 Your Affiant further conducted a records check and discovered Timothy Charles Craig (09.03.1958)  
31 residing at 3271 Beard Road, Napa, California is a PC290 registered sex offender with the California  
32 Department of Justice.

33  
34 Your Affiant requests a warrant be issued for the following:

35 THE PREMISES at **3271 Beard Road, Napa, California, 94558**; further described as a two-story apartment  
36 complex with peach colored, stucco exterior, and off **white wood** trim, and the numbers 3271 affixed on the  
37 outside of the residence, to the left of the off white wood front door; including all rooms, attics, basements, and  
38 other parts therein, the surrounding grounds and any garages, storage rooms, trash containers, and  
39 outbuildings of any kind located thereon.

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display monitors, modems, external data storage devices, optical readers and related communication devices such as acoustic or electrical modems, or other controlling devices such as diskettes, CD-R, CD-RW, DVD disks, power back-up devices, connecting switches, interface devices, software to run programs, connecting cables, switches, power sources, and plugs.

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Any articles of personal property tending to establish the identity of persons who have dominion and control over the premises, automobiles, or items to be seized, including rent receipts, utility bills, telephone bills, miscellaneous addressed mail, personal letters, personal identification, keys, purchase receipts, sales receipts, tax statements, payroll check stubs, photographs, vehicle ownership certificates or "pink slips," and vehicle registration slips.

Your Affiant requests that during the execution of this search warrant that law enforcement officers or assigned representatives are authorized to video tape and / or photograph / digital image the site, evidence at the site and / or people or persons at the site.

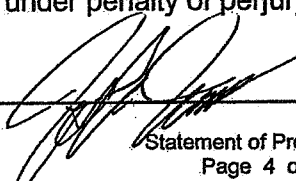
Through experience and training, your affiant knows those individuals engaged in the possession, and distribution of child pornography will store those files in various locations, and on various forms of digital media including computer hard drives, and external storage locations. These individuals will often obtain, trade, and distribute these pornographic images via an internet connection, provided by an Internet Service Provider.

YOUR AFFIANT requests that a Search Warrant be issued based upon the aforementioned facts, for the seizure of said property, or any part thereof, between the hours of 7:00 A.M. and 10:00 P.M., good cause being shown thereof, and the same be brought before this Magistrate or retained subject to the order of the court, or of any court in which the offense(s) in respect to which the property of things taken, triable, pursuant to Section 1536 of the Penal Code,

Items attached and incorporated by Reference: YES ☒ NO ☒

YOUR AFFIANT certify (declare) under penalty of perjury that the foregoing is true and correct.

Executed at Napa, California



Date: 8/7/2007 at 1115 (A.M.) P.M.

Reviewed by: \_\_\_\_\_ Date: \_\_\_\_\_ at \_\_\_\_\_ A.M. / P.M.

# EXHIBIT D

BARRY J. PORTMAN  
Federal Public Defender  
STEVEN G. KALAR  
Assistant Federal Public Defender  
450 Golden Gate Avenue  
San Francisco, CA 94102  
Telephone: (415) 436-7700

Counsel for Defendant Craig

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

TIMOTHY CRAIG,

Defendant.

) No. CR 08-0329 JSW

) DEFENDANT'S MOTION TO  
) SUPPRESS EVIDENCE  
) SEIZED IN VIOLATION OF  
) THE FOURTH AMENDMENT

) NOTICE OF UNDER-SEAL  
) FILING OF EXHIBIT D

**Hearing Date:** Thursday,  
September 25, 2008 at 2:30  
p.m.

Exhibit D in Mr. Craig's motion to suppress is the declaration of the Honorable Judge John Anton, along with a packet of materials that he reviewed before signing his declaration. That packet is the material that Napa Detective Jones claims to have submitted in support of his application for a Napa search warrant on August 7, 2007. Within the packet is ICE Report of Investigation #9. Because of sensitive information within that Report, it has been filed under seal.

# EXHIBIT E



CL07QR06PT0009 – Lee SLY

Enclosed are:

1. CD with contents of SLY's e-mail account. The message number(s) notated on the ROI for your target will correspond to the e-mail message number(s) in the appropriate folders: "Sent" or "Read". In addition, this message number will correspond to any image/movie files attached to the e-mail. AOL separates the image/movie files from the text of the e-mail message. All image/movie files will be located in the "Attachment" folder within either the "Sent" or "Read" folders; just look for the number that corresponds with your e-mail message number(s) and make note that there may be multiple images attached to an e-mail message. Also, please remember that I have not notated every single e-mail message involving your target – I only went through and noted the ones with images that could be considered actionable. So if you want to show a back and forth conversation between your target and SLY, you may want to go through all messages to see if there are any more messages dealing with your target.
2. Floppy disk with your target's subscriber information, detailed billing information and any buddy lists. In addition, the word document contains the last IP login (at the date of the search warrant) for each target. Because AOL and many other ISPs only keep records for 90 days, you may want to send a Summons out fairly quickly for the IP address/ANI information that will put the computer at the target's residence. In addition, any NCMEC response (if there was one for your target) and a word doc. containing my search warrant will be located on this floppy.
3. Copy of the search warrant signed on 3/1/2007 at 1:58 pm. Even though there is no signature on the search warrant cover sheet, it was signed (the court will not issue a case number unless it is signed.)
4. If you open a case, please use the project code for Operation Bulldog, as the RAC/Fresno is still tracking the spin-offs from their original case.

If you have any questions, feel free to give me a call (216)706-4292 x.422.

Thanks,  
Gabriel Hagan

# EXHIBIT F

I N C I D E N T  D A T A	Agency Name <b>Napa Sheriff's Department</b>		<b>INCIDENT / INVESTIGATION REPORT</b>				OCA <b>NSD07-003262</b>	
	ORI <b>CA0280000</b>						Date / Time Reported <b>MO Jul 30, 2007 14:32</b>	
	#1	Crime Incident <b>FEL - POSSESS/ETC MATTER DEPICTING</b>	UCR:	Local Statute:	Att Com	Last Known Secure <b>MO Jul 30, 2007 14:32</b>		
#2	Crime Incident <b>FEL - FAIL REGISTER/CHANGE</b>	UCR: <b>90Z</b>	Local Statute: <b>290</b>	Att Com	At Found <b>MO Jul 30, 2007 14:32</b>			
#3	Crime Incident	UCR:	Local Statute:	Att Com				
Location of Incident <b>3271 Beard Rd, Napa, CA 94558</b>					Premise Type <b>Other/Unknown</b>		Offense Tract	
MO	How Attacked or Committed							
Weapon / Tools					Forcible Entry Yes No N/A			
V I C T I M	# Victims <b>1</b>	Type <b>Society/ Public</b>	Injury <b>None</b>			Residency Status		
	Victim/Business Name (Last, First, Middle) <b>V1 State Of Ca 2006-2007</b>				Victim of Crime # <b>I 370</b>		Age / DOB	Race Sex
					Relationship to Offenders <b>Not Specified</b>			
	Home Address					Home Phone		
	Employer Name/Address					Business Phone		
	VYR	Make	Model	Style	Color	Lic/Lis	VIN	
O T H E R  I N V O L V E D	CODES: V- Victim (Denote V2, V3) O = Owner (if other than victim) R = Reporting Person (if other than victim) I = Other Involved							
	Code	Name (Last, First, Middle)				Victim of Crime #	Age / DOB	Race Sex
	Home Address				Home Phone			
	Employer Name/Address				Business Phone			
	Code	Name (Last, First, Middle)				Victim of Crime #	Age / DOB	Race Sex
	Home Address				Home Phone			
P R O P E R T Y	<b>RELEASED TO DA attn: DDA Lieberstein</b> <b>RELEASED BY HC</b> <b>DATE 1-3-08</b> <b>RECEIVED</b> <b>JAN 04 2008</b> <b>NAPA COUNTY DIST. ATTORNEY</b>							
	<b>STATUS</b> L = Lost S = Stolen R = Recovered D = Damaged Z = Seized B = Burned C = Counterfeit / Forged PLANE U = Unknown (Check "OJ" column if recovered for other jurisdiction)							
	Victim #	UCR	Status - Date	Value	OJ	QTY	Property Description	Make/Model Serial Number
	26	EVI	8/13/2007	\$1.00		1.00	Th1 Vhs Tape	
	77	EVI	8/13/2007	\$1.00		1.00	Th2 Child Blow-Up Doll	
	26	EVI	8/13/2007	\$1.00		3.00	Th3 3 Cd Rom Discs	
	07	EVI	8/13/2007	\$1.00		1.00	Th5 Nikon 35mm Camera	NIKON/N75 2209860
	26	EVI	8/13/2007	\$1.00		1.00	Th4 Nickelback Cd	
	07	EVI	8/13/2007	\$1.00		1.00	Th6 Canon Digital Camera	CANON/A530 2822211805
	07	EVI	8/13/2007	\$1.00		1.00	Th7 Jvc Camcorder	JVC/GRAXM80 14220640
	07	EVI	8/13/2007	\$1.00		1.00	Th8 Toshiba Laptop Computer	TOSHIBA/M115 X6104930Q
	07	EVI	8/13/2007	\$1.00		8.00	Th9 Misc Cd's, Various Labels	
07	EVI	8/13/2007	\$1.00		5.00	Th10 5 3.25 Floppy Discs		
11N	EVI	8/13/2007	\$1.00		3.00	Th11 Jetson's Pornography Printout		
11N	EVI	8/13/2007	\$1.00		1.00	Th12 Porn Catalogue		
Number of Vehicles Stolen <b>0</b>				Number Vehicles Recovered <b>0</b>				
ID	Officer <b>(250175) JONES, JOSEPH JAMES</b>			Officer Signature			Supervisor Signature <b>(250087) FOSTER, MARK</b>	
Complainant Signature				Case Status: <b>Closed And Cleared By Arrest December 5, 2007</b>			Case Disposition: <b>Cleared By Arrest / Misd Cite Dec 5, 2007</b>	

Napa Sheriff's Department

OCA: NSD07-003262

Status Codes L = Lost S = Stolen R = Recovered D = Damaged Z = Seized B = Burned C = Counterfeit / Forged F = Found U = Unknown									
D R U G S	Status	Quantity	Type Measure	Suspected Drug Type					
	EVI - 8/13/2007	1.00		Th15 2 Wood Boxes W/Marijuana,					
	EVI - 8/13/2007	1.00		Th20 Glass Mj Pipe, Burnt Residue					
	EVI - 8/13/2007	1.00		Th21 Wood Container W/Marij Pipe					
O F F E N D E R	Offender(s) Suspected of Using		Offender 1 <b>OF1</b>		Offender 2		Offender 3		Primary Offender Resident Status p Resident - Non-Resident - Unknown
	- Drugs - N/A		Age: <b>48</b> Race: <b>W</b> Sex: <b>M</b>		Age: Race: Sex:		Age: Race: Sex:		
	- Alcohol		Offender 4		Offender 5		Offender 6		
	p Computer		Age: Race: Sex:		Age: Race: Sex:		Age: Race: Sex:		
S U S P E C T	Name (L, F M) <b>Craig, Timothy Charles</b>				Home Address				Home Phone
	<b>OF1</b> AKA <b>Craig Charles</b>				<b>4095 Fairfax Dr, Napa, CA 94558</b>				<b>1282</b>
	Occupation		Business Address		Business Phone				
	Chauffeur		Napa Valley Tours / ADRIAN ST, NAPA						
	DOB. / Age	Race	Sex	Hgt	Wgt	Build	Hair Color	Eye Color	
	<b>1958</b> / <b>48</b>	<b>W</b>	<b>M</b>	<b>6'04</b>	<b>250</b>		<b>Gray Or</b>	<b>Hazel</b>	
						Hair Style	Hair Length	Glasses	
	Scars, Marks, Tattoos, or other distinguishing features (i.e. limp, foreign accent, voice characteristics)								
	<b>Scars/Scars Hand-Bi Lateral Carpal Tunnel-Both Hands</b>								
	Hat		Shirt/Blouse		Coat/Suit		Socks		
Jacket		Tie/Scarf		Pants/Dress/Skirt		Shoes			
Was Suspect Armed?		Type of Weapon			Direction of Travel		Mode of Travel		
VYR	Make	Model	Style/Doors	Color	Lic/Lin	Vin			
<b>2006</b>	<b>JEEP</b>	<b>J-10</b>	<b>STATIO</b>	<b>SIL</b>	<b>H633</b>				
Suspect Hate / Bias Motivated: - Yes <b>p</b> No				Type:					
W I T N E S S	Name (Last, First, Middle)				D.O.B.	Age	Race	Sex	
	Home Address				Home Phone	Employer	Phone		
N A R R T I V E	<b>AWARENESS:</b>								
	In July, 2007 I received information from the Department of Homeland Security, Immigration Customs Enforcement Division. I spoke to agents with Immigration and Customs Enforcement who requested my assistance with this investigation. Agents provided detailed reports, Subpoenaed information, and court ordered documents.								
	<b>INVESTIGATION:</b>								
	In November 2005 special agents with the Cleveland office of the Department of Homeland Security received information related to the possession and/or distribution of child pornography. Agents were lead to believe that Lee Sly of North Royalton Ohio had received child pornography via an email.								
In January 20007, agents received additional information from the Orland Park, IL Police Department.									

**Incident / Investigation Report***Napa Sheriff's Department*

OCA: NSD07-003262

**Officer's Narrative (continued)**

Officers discovered Richard Darkey was involved in trading child pornography via the internet. Darkey received an image of child pornography from the screen name "SIRIOUT3", identified as Lee Sly.

On March 1, 2007 agents served America Online with a federal search warrant for Sly's email account information. A further examination of his account revealed 125 other individuals engaged in trading child pornography (Reference Attachment). All the investigative leads contained at least one image or movie file of child pornography received, forwarded, and/or traded by each target in January and February of 2007. The America Online search warrant results indicated that Timothy Craig was a suspect in this investigation. The records indicated the following:

"Limosdude"- Tim Craig, 3271 Beard Rd., Napa, CA, 94558, [REDACTED]-1282.  
Message # 223 in Sly's "sent" folder.

Based on this information Special Agent Charles H. Demore summoned records from Pacific Gas & Electric for records of service as 3271 Beard Road, Napa, California, 94015. Those records indicate a customer name of "Tim Craig" with a telephone number of (707)257-1282.

I conducted a records check and discovered Timothy Charles Craig ([REDACTED].1958) residing at 3271 Beard Road, Napa, California is a PC290 registered sex offender with the California Department of Justice. Craig also had previous convictions for 288PC offenses.

On 08/06/2007 I drove to 3271 Beard Road, in Napa, and made note of this address. I observed a silver Jeep parked in a parking stall in front of the apartment. The vehicle returned registered to Timothy Charles Craig. I also checked the law enforcement, Megan's Law website and noted Craig's address and previous convictions.

Based on my training and experience I formed the opinion Craig may be in possession of child pornography. I prepared and authored a search warrant for Craig's residence, and vehicles.

I referred this case to Detective Hancock for further investigation.

**SEARCH WARRANT EXECUTION:**

On 08/08/2007 I assisted in the execution of this search warrant at Craig's address. We approached the residence and determined no one was inside the apartment. I assisted federal agents and other investigators in processing the residence. We collected numerous items of evidence and retained them.

**RECOMMENDATIONS:**

**CASE PENDING-** This case is pending additional investigation and has been referred to Detective Hancock.

TC00047



## Incident / Investigation Report

Napa Sheriff's Department

OCA: NSD07-003262

## Additional Officer Supplements

THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY

Officer (250057) HANCOCK, TODD

Supplement Type: SUPPLEMENTAL

Date / Time 9/20/2007 10:56

## Search Warrant: 3271 Beard Road

On 8/8/07 at 0945 hrs., Napa County Sheriff's Investigations personnel, accompanied by ICE agents executed a search warrant for the premises located at 3271 Beard Road. Knock /Notice was made at the front door to the ground floor apartment without acknowledgement. After repeated attempts to notify, forced entry was made to the front door. The interior was cleared with no one present. The residence was searched with numerous items of potential evidence seized. A property sheet detailing the seized items and copy of the warrant were left behind and the apartment manager was notified to secure the door.

## Evidence:

The following is a summary of items seized from the residence and a brief statement regarding the evidentiary value of the item after later examination at the Sheriff's Department. Items seized which required extensive analysis are noted and reported in detail separately. NEV=No Evidentiary Value

TH1: VHS Tape from kitchen counter. NEV

TH2: Child-sized plastic blow-up doll. Located in cabinet above kitchen refrigerator.

TH3: 3 CD's on kitchen counter. Music NEV

TH4: CD-R "Nichelbach" Music NEV

TH5: Nikon Camera. Living room.

TH6: Canon Digital Camera. Living room.

TH7: JVC Compact VHS camcorder. Living room. Contains VHS-C tape with images of two male juveniles sitting on a couch, possibly in suspects living room. One juvenile smoking what appears to be marijuana.

TH8: Toshiba Satellite laptop computer, living room. Child Pornography/See forensic report.

TH9: Numerous CD-R's found on living room floor and couch. TH-9A: Unlabelled CD-R containing numerous images of young children in provocative poses, includes indicia and photo of (S) Craig. See Forensic Report.

TH10: Misc 3.5" floppy discs. Living room floor. NEV

TH11: Glossy computer printouts. Living room floor. Cartoon pornography Jetsons.

TH12: Pornographic catalogue.

TH13: 35MM film roll, exposed. Living room.

TH14: Teen related pornography. Living room floor under couch. References to "Childmodel.com" "LaurieModel.com" Sherri-model.com" Sexyteenz.org"

TH15: 2 Wood boxes. Living room couch. Containing baggies with loose marijuana, smoking pipes and white residue.

TH16: CD-spool with misc CD-R's. Bedroom closet. NEV

TH17: Boxes of pornographic DVD's. Bedroom closet.

TH18: Printed pornography. Bedroom floor. Contains text rape story involving 15 year old female with adult male teacher.

TH19: Girls panties. Knit children's hat. Bedroom bed stand.

TH20: Glass marijuana pipe w/burnt residue. Living room table.

TH21: Wood box containing marijuana. Living room.

TH22: 2VHS tapes. Bedroom closet. NEV

TC00048

## Incident / Investigation Report

*Napa Sheriff's Department*

OCA: *NSD07-003262*

### Additional Officer Supplements

**THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY**

Officer (250057) *HANCOCK, TODD*

**TH23: Sony PS1 game console. Living room. NEV**

**TH24: Red box containing numerous VDV/CD's/ Living room. NEV**

**TH25: VHS Tapes, DVD's. Living room. NEV**

**TH26: Indicia. Mail belonging to Timothy Craig @ 3271 Beard Road. Kitchen office.**

**TH27: CD-R labeled "grassroots". NEV**

**TH28: Polaroid photo of nude young boy. Film negatives. Kitchen office table.**

**TH29: Sony CD-R unlabelled. Living room near fishtank. Child pornography/Tim Craig indicia. See forensic report.**

**TH30: Yellow notepad, handwritten notes and fiction. Carport. NEV**

TC00049

**Incident / Investigation Report****Napa Sheriff's Department**OCA: **NSD07-003262****Additional Officer Supplements****THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY**Officer **(250057) HANCOCK, TODD**Supplement Type: **EVIDENCE RESULTS**Date / Time **9/20/2007 16:50****Report of Forensic Computer Examination****Digital evidence imaged and examined using FTK (Forensic ToolKit) version 1.71.1****The complete report is documented on CD and includes images, e-mail and other data retrieved from the examined media.****Item TH-8****Toshiba Satellite laptop computer, Model M115 containing an 80 GB SATA HDD.****This laptop was located in the living room of Timothy Craig's apartment. It had a wireless Internet card installed.****The computer BIOS was checked to confirm the computer clocks accuracy. The computer was last used or operated on 8/7/07 at 3:53 AM. The Windows operating system lists only one unique identified user as "Tim". There was no evidence that any other identifiable person used this computer. This computer was used extensively to access the Internet, primarily via America Online (AOL), which was last activated on 8/7/07 at 3:49 AM.****Within the AOL directory were several unique screen names, used by the user to interact with the AOL program as sub-accounts to the primary. The following AOL names were located: Craigncalif, Limosdude, NorCalTC58 and TCgiantsfan58. It should be noted that Timothy Craig's birth date is in 1958 and that he drives a limousine for a living.****The user name "Limosdude" was identified during the initial federal investigation being associated with known child pornography traffickers.****Each of the AOL screen names were used to receive and send images containing child pornography. Craig was a member of several Internet image trading groups; for example, Craig sent and received erotic images of adolescent teen females on an e-mail list titled, "List A: Send those CUTIES & HOTTIES from behind only pics." The typical email to and from this trading group would contain over 20 other e-mail names and include at least one attached image. E-mail dates recovered on the computer range from April-August 2007.****While examining the contents of e-mail messages sent and received by Timothy Craig I located messages to and from over 30 unique AOL accounts that appeared to belong to adolescent or pre-teen females. These messages, from AOL account names such as "KilleDawn14" and "SeaSprite12" included digital images of the sender, often dressed provocatively, in underwear or in suggestive poses. Craig replied to several of these messages with a picture of himself dressed in a white shirt, vest and tie. These AOL screen names were cross referenced with NCMEC for known victims of child exploitation (see attached report).****Within the "My Pictures" folder in the "Tim" user directory were over 190 digital photographs of adolescent and pre-teen females. Many of these pictures depict the young females fully or partially nude. Most are**

**Incident / Investigation Report**

*Napa Sheriff's Department*

OCA: **NSD07-003262**

**Additional Officer Supplements**

**THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY**

Officer **(250057) HANCOCK, TODD**

**posed provocatively or with their legs spread. These files were created on the computer between May and August 2007 and were last accessed on 8/7/07 up to 3:15 AM.**

**Several hundred HTML (Web site) files were located within the Internet History and Temp folders. These files indicated the computer was used to visit Internet sites focused primarily on child pornography and child erotica sites, many based in Eastern Europe. Access dates on these files indicate viewing up to August 7, 2007.**

**ITEM TH-9, TH-29**

**Unlabelled writable CD discs found in Timothy Craig's living room. Both discs contain child pornography and numerous digital images of young females previously located on the laptop computer. Data indicates CD's were created and images transferred from the laptop computer between January and March 2007.**

TC00051

## Incident / Investigation Report

Napa Sheriff's Department

OCA: NSD07-003262

### Additional Officer Supplements

THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY

Officer (250057) HANCOCK, TODD

Supplement Type: SUPPLEMENTAL

Date / Time 9/20/2007 16:58

#### Recommendation:

Evidence recovered from digital media belonging to (S) Timothy Craig indicates he knowingly possessed and trafficked in obscene material (child pornography).

Forward to Napa County DA for review and prosecution:

F PC 311.1 Trafficking in depictions of sexual conduct by minors

F PC 311.3 Sexual exploitation of a child

M PC 311.11 Possession of depictions of sexual conduct by minors

Additionally, Timothy Craig is a registered sex offender per PC 290 with two prior felony convictions for enticing minors via the Internet and travelling to engage in sexual acts with minors.

Copy of this report to ICE/San Francisco Attn: Agent Vergara

TC00052



**Incident / Investigation Report**

Napa Sheriff's Department

OCA: NSD07-003262

**Additional Officer Supplements****THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY**

Officer (250057) HANCOCK, TODD

Supplement Type: EVIDENCE RESULTS

Date / Time 12/3/2007 13:48

**Follow Up Computer Analysis**

At the request of the Napa County District Attorneys Office, the following exhibits and items of evidence were separated from the original FTK report for the purpose of consolidation, clarification and interpretation.

**IMAGES**

- 1."cumalot.jpg": Image of nude young girl (under age 12). Girl is masturbating an adult male penis, which is shown ejaculating. Adult male hand is seen apparently penetrating her vagina. Image is located on TH-8 (Toshiba Laptop belonging to Tim Craig) at C:\Documents and Settings\Tim\My Documents and was last accessed on 7/31/07
- 2."Innocent.jpg": Close up image of vaginal area of apparent pubescent female. Image is located on TH-8 (Toshiba Laptop belonging to Tim Craig) at C:\Documents and Settings\Tim\My Documents and was last accessed on 8/7/07
- 3."Mandy1": Image of juvenile female, apparently under age 16, exposing nude breasts with her shirt pulled up. Image is located on TH-8 (Toshiba Laptop belonging to Tim Craig) at C:\Documents and Settings\Tim\My Documents and was last accessed on 7/31/07.
- 4."sexoxy.jpg": Image of nude female juvenile, apparently under the age of 16. Girl is posed exposing her nude breasts and vaginal area. Image is located on TH-8 (Toshiba Laptop belonging to Tim Craig) at C:\Documents and Settings\Tim\My Documents and was last accessed on 8/7/07
- 5."db-twocute.jpg": Image of two girls, exposing nude breasts. Girls have partially taken off pants, exposing underwear and are posed provocatively, with one girl grasping other girls waist. Image is located on TH-8 (Toshiba Laptop belonging to Tim Craig) at C:\Documents and Settings\Tim\My Documents and was last modified on 7/3/07.
- 6."sweetbreasts.jpg": Image of young girl (Under age 12) nude from waist up, exposing breasts. Image is located on TH-8 (Toshiba Laptop belonging to Tim Craig) at C:\Documents and Settings\Tim\My Documents and was last accessed on 8/7/07.
- 7."xxx dau 0920070322-14562a.jpg": Image of adult male ejaculating into mouth of young girl ((under 14). Image is located on TH-8 (Toshiba Laptop belonging to Tim Craig) at C:\Documents and Settings\Tim\My Documents and was last accessed on 7/31/07.
- 8."sanditori2.jpg": Image of two young girls, under 12 years of age, sitting next to each other on a trampoline. Girls are scantily clothed and posed provocatively. Image is located on TH-8 (Toshiba Laptop belonging to Tim Craig) at C:\Documents and Settings\Tim\My Documents and was last accessed on 8/7/07. This picture is a part of a large series of photos showing images of "sandi" in provocative poses apparently taken over a period of several years.
- 9."triciahot.jpg": Image of young girl (Under age 12) posed in yellow bikini barely covering breasts. Image is located on TH-8 (Toshiba Laptop belonging to Tim Craig) at C:\Documents and Settings\Tim\My Documents and was last accessed on 7/31/07.
- 10."MYLITT~1.jpg" Image of two teenage females laying on stomachs facing away from camera, the girls are wearing short skirts and the camera angle is from between their legs. Image is located on TH-8 (Toshiba Laptop belonging to Tim Craig) at C:\Documents and Settings\Tim\My Documents and was last accessed on

**Incident / Investigation Report***Napa Sheriff's Department*OCA: *NSD07-003262***Additional Officer Supplements****THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY**Officer *(250057) HANCOCK, TODD***7/31/07.**

The above samples are representative of the over 400 pictures found within Timothy Craig's "My Documents" folder. The images contained within this folder are overwhelmingly child erotica oriented. While the majority of the images do not contain explicitly obscene material, they focus on young females from ages 10-14 and contain provocative poses of a sexual nature. The images are stored within the "My Documents" and "My Pictures" folders on this Windows operating system. Storage in these areas indicates active knowledge of the contents and manipulation by the computer user.

**YGP FOLDER**

America Online, Timothy Craig's Internet Service Provider, allows users to create an online photo gallery in which users can upload and store digital images. The purpose of an on-line photo gallery is make these pictures available to others to view. Images stored within this AOL photo gallery are assigned unique file-names when they are uploaded to the web server. This file name is typically a sequential number preceded by the letters "YGP" (ex: ygp124.tmp). I found over 400 digital images associated with a shared photo gallery on Tim Craig's computer. These images are also stored on the users computer in the following directory: \Documents and Settings\Tim\Local Settings\Temp.

The images are predominantly of provocatively posed young girls, nude and in various other costumes, with many of the same images found on other areas of Craig's computer. Additionally one image, "ygpFAFD.JPG", is found in this directory. This image is of a young nude female (approx 6 years of age) pictured kneeling on a bed with her hands bound behind her back. This particular image was last accessed on 7/3/07. By posting obscene images to this online photo gallery, Tim Craig allows other users to view and download the illegal images.

**CHILD ABUSE IMAGE TRADING**

Timothy Craig had hundreds of e-mails received from a large group of subjects focused on the trading of obscene images of children. For example, on 7/2/07, Craig received an e-mail from "SubCarol2Fems" titled, "List "B": Send some young SPANKINGS/Bondage pics." The writer states, "Hi..I am back nowLet's ALL send & trade as alwaysNON-SENDERS will be REMOVEDLove you all, Carol." This e-mail contained 3 attached images, one of which, titled, "bond-yng2.jpg" is the same nude and bound young female found previously in Craig's AOL gallery. Craig received the image on July 2nd and apparently placed it onto the gallery the following day, July 3rd to share with others.

I separated several of these e-mails as examples and included them on the attached disk.

**TH-9 and TH29**

These items are CD-R writable CD-Rom discs located in Timothy Craig's apartment.

TC00054

**Incident / Investigation Report***Napa Sheriff's Department*OCA: **NSD07-003262****Additional Officer Supplements****THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY**Officer **(250057) HANCOCK, TODD**

TH-29 contains over 500 images. These images consist of child pornography, child erotica and some adult pornographic images. Some of these images are also found on TH-8, the laptop computer.

TH-9 contains over 700 images. In addition to child pornography, child erotica and other pictures, photographs of Tim Craig were on this disc.

**TEMP INTERNET**

The "Temp Internet" directory is a depository for graphics and web pages that the Windows operation system uses to refresh and reload Internet web sites faster. All web sites consist of many parts, and most contain graphics or small images, which are also stored in the Temp Internet folder. A search of this folder will give the examiner a very clear picture of the users' Internet usage and often will reveal specific web-sites visited. These images are stored automatically and without the knowledge of the user.

There were over 11,000 images stored inside the "Temp Internet" folder associated with the user, "TIM" (The only unique username on this computer). I found over 100 images of child pornography, including dozens of illegal child pornography web sites focused on pre-teen girls. In my training and experience, the preponderance of these types of web sites over others indicates the user was primarily focused on using the Internet to search for and view illegal child abuse images.

**CHAT**

Internet Relay Chat (IRC) enables two (or more) persons to communicate by writing or voice instantly via the Internet. Users will typically use an Internet Service Provider (like AOL) and browse "chat rooms" which are places for persons with common interests to meet. Users can enter into "private chat" rooms where they can write to each other without anyone else seeing the content of their chat. Depending on the client, settings and user preferences, some of this chat text is captured or logged by the computer system. I know from training and experience that AOL chat does not typically "log" or leave a text transcript on the users computer. I was able to locate numerous references to chat room activity indicating the room names visited and saw rooms predominantly focused on pedophilia, (ex: ygspredlegs, grd8hotties, herliilpantees). I found two distinct chat transcripts on Tim Craig's computer: In a conversation with MeganR0892, Craig (as NorCalTC58) discusses sending pictures and raping Megan and her sister, admitting he was aroused by the conversation. In the second, a chat with Kayla65478, Craig mentions he saw her in a chat room named "grandpa 4lilf" and immediately begins to focus the conversation on grooming and seducing the 12 year old female.

**CONCLUSION**

Based upon my examination of the digital medial listed above, I have developed the following opinions:

- 1.The computer belonged to Timothy Craig who was the only identifiable user.
- 2.Timothy Craig used his AOL account to receive e-mail communications with known traders in child

TC00055

## Incident / Investigation Report

*Napa Sheriff's Department*

OCA: **NSD07-003262**

### Additional Officer Supplements

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Officer **(250057) HANCOCK, TODD**

**pornography.**

**3.Timothy Craig received dozens of images of child sexual abuse from these traders.**

**4.Timothy Craig uploaded obscene images to a shared AOL photo gallery, allowing other users to access view and download the images.**

**5.Timothy Craig saved images of child pornography he received from other traders as well as the Internet and placed them into a user-defined directory. He made copies of some of the material and burned the images to CD-Rom.**

**6.Timothy Craig was in active Internet communication with several dozen girls he had apparently met in AOL chat rooms. Based upon the chat text recovered he appeared to be actively pursuing these females and had received several pictures from juvenile females.**

**Copy to DA, Attn Paul Gero**

TC00056

# EXHIBIT G



GARY LIEBERSTEIN  
DISTRICT ATTORNEY  
County of Napa  
State Bar no. 92812  
931 Parkway Mall  
Napa, CA 94559  
(707) 253-4211  
FAX: (707) 253-4041

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF NAPA**

THE PEOPLE OF THE STATE OF CALIFORNIA,  
Plaintiff,

vs.

TIMOTHY CHARLES CRAIG

Defendant.

NSC NUMBER:

NDA NUMBER: 198602021-05

**CRIMINAL COMPLAINT**

DATE:

TIME:

DEPT:

RECEIVED  
DEC 11 2007  
NAPA CO.  
PUBLIC DEFENDER

The undersigned is informed and believes that:

**COUNT ONE**

**POSSESSION OR CONTROL OF CHILD PORNOGRAPHY WITH A PRIOR  
PC311.11(b)  
FELONY**

On or about August 8, 2007 in the County of Napa, State of California, the crime of POSSESSION OR CONTROL OF CHILD PORNOGRAPHY WITH A PRIOR in violation of section 311.11(b) of the Penal Code, a Felony, was committed by TIMOTHY CHARLES CRAIG, who did unlawfully and knowingly possess and control matter depicting a person under the age of 18 years personally engaging in and simulating sexual conduct as defined in Penal Code Section 311.4(d).

It is further alleged that defendant TIMOTHY CHARLES CRAIG, was previously convicted of:

**PC 664/288(a)**

**Los Angeles**

**#SA036062-01**

**8/5/99**

**COPY**

**COUNT TWO****EXHIBITING A MINOR IN PORNOGRAPHY**

PC311.2(b)

**FELONY**

On or about August 8, 2007 in the County of Napa, State of California, the crime of EXHIBITING A MINOR IN PORNOGRAPHY in violation of section 311.2(b) of the Penal Code, a Felony, was committed by TIMOTHY CHARLES CRAIG, who did unlawfully, and knowingly send and cause to be sent and bring and cause to be brought into the State of California for sale and distribution, and in the State of California did prepare, publish, produce, print, exhibit, distribute, and offer to distribute for commercial consideration and have in his/her possession with intent to distribute for commercial consideration, obscene matter, to wit, child pornography, knowing such matter depicted a person under the age of eighteen years, to wit, Jane Doe, personally engaging in and personally simulating sexual conduct as defined in Penal Code Section 311.4.

**SPEC ALLEG-2/3 STRIKES (ONE PRIOR)**

PC667(b)-(i)

It is further alleged as to count ONE and TWO pursuant to Penal Code section(s) 667(b) through (i) that the defendant(s) TIMOTHY CHARLES CRAIG, has suffered the following prior conviction(s) of a serious or violent felony or juvenile adjudication:

<b>PC 664/288(a)</b>	<b>Los Angeles</b>	<b>#SA036062-01</b>	<b>8/5/99</b>
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**SPEC ALLEG-PRIOR-ANY FELONY**

PC667.5(b)

It is further alleged as to Count(s) ONE and TWO pursuant to Penal Code Section 667.5(b) that the defendant TIMOTHY CHARLES CRAIG, has suffered the following prior conviction(s):

<b>PC 664/288(a)</b>	<b>Los Angeles</b>	<b>#SA036062-01</b>	<b>8/5/99</b>
----------------------	--------------------	---------------------	---------------

and that a term was served as described in Penal Code section 667.5 for said offense(s), and that the defendant TIMOTHY CHARLES CRAIG, did not remain free of prison custody for,

and did commit an offense resulting in a felony conviction during, a period of five years subsequent to the conclusion of said term.

Complainant therefore prays that a warrant be issued and that said defendant(s) be dealt with according to law. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: December 4, 2007

GARY LIEBERSTEIN  
DISTRICT ATTORNEY

By: 

Paul Gero  
Deputy District Attorney

pg

### NOTICE

PLEASE TAKE NOTICE THAT COUNSEL FOR THE PEOPLE HEREBY MAKE  
AN INFORMAL DEMAND FOR DISCOVERY (PURSUANT TO PC 1054.3)  
WITHIN FIFTEEN DAYS

### SUMMARY OF CHARGES AND PUNISHMENT TIMOTHY CHARLES CRAIG ( DOB : 09/03/1958 )

COUNT	CHARGE	PUNISHMENT	EFFECT
ONE	PC311.11(b)	2-4-6	
TWO	PC311.2(b)	2-3-6	
SPEC	PC667(b)-(i)	Check Code	
SPEC	PC667.5(b)	+1 yr. per prior	

# EXHIBIT H

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FAX: (707) 253-4041

RECEIVED  
JAN 16 2008  
NAPA CO.  
PUBLIC DEFENDER

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF NAPA

PEOPLE OF THE STATE OF CALIFORNIA,  
Plaintiff,

vs.

TIMOTHY CHARLES CRAIG,  
Defendant(s).

COURT NUMBER(S): CR138178  
PID NUMBER(S): 198602021-05

**PEOPLE'S POINTS AND AUTHORITIES IN  
OPPOSITION TO DEFENDANT'S MOTION  
TO SUPPRESS EVIDENCE & QUASH OR  
TRAVERSE SEARCH WARRANT  
(PC 1538.5)**

DATE: January 18, 2008  
TIME: 8:30 a.m.  
DEPARTMENT: E

**I. STATEMENT OF THE CASE**

The search warrant challenged in this case resulted in the prosecution of defendant. He is charged by Complaint with violating Penal Code Sections 311.11(b), 311.2(b) and 290(a)(1)(A) and special allegations, specifically Penal Code Sections 667(b)-(i) (Prior Strike) and 667.5(b) (Prior Prison Term). On January 4, 2008, defendant filed a Motion to Suppress and Quash Warrant. This motion attempts to suppress and return defendant's property, including child pornography, seized by the Napa County Sheriff's Department. He would like to prevent the People from proceeding against the defendant in the prosecution for Possession of Child Pornography With a Prior and Exhibiting a Minor in Pornography.



**II. STATEMENT OF FACTS**

In January 2007, the Department of Homeland Security through Immigration and Customs Enforcement ("ICE") was conducting an ongoing operation ("Operation Bulldog") against child pornography. An investigation by the Orland Park, Illinois Police Department discovered that Richard Darkey received an image of child pornography from Lee Sly. This email, titled "6<sup>th</sup> graders from the REAR only", was forwarded unwittingly to law enforcement on December 12, 2006.

On March 1, 2007, ICE served America Online with a federal search warrant for Lee Sly's e-mail account. According to ICE, the account revealed 125 other individuals engaged in trading child pornography. All of these contain at least one image or movie file of child pornography received, forwarded and/or traded by each target in January and February 2007.

Pursuant to the federal search warrant, one of the 125 individuals was identified to ICE by America Online as "Limosdude" – Tim Craig, 3271 Beard Rd., Napa, CA 94558, (707) 257-1282. Message # 228 in Lee Sly's "sent" folder.

Defendant is identified as a registered sex offender for a conviction of attempt Child Molest in Los Angeles County. His is also identified as the defendant in a 2002 prosecution out of San Mateo County. This case involved the luring of a 13 year old girl, played by an undercover police officer from the Daly City Police Department.

On June 11, 2007, Special Agent Vladimir Venerga subpoenaed Pacific Gas and Electric to produce records for defendant. These records verify the name and address for defendant. Defendant, Tim Craig, lived at 3271 Beard Road in Napa, California since August, 2003.

In July, 2007 Napa County Sheriff's Department Detective Joe Jones received the aforementioned information from ICE and initiated an investigation. Detective Jones conducted a records check and

1 discovered that defendant resided at 3271 Beard Road, is registered with the Department of Justice as a sex  
2 offender, and had previous PC 288 offenses. On August 6, 2007, Detective Jones drove to 3271 Beard  
3 Road and observed a silver Jeep parked in front of the apartment. That vehicle was registered to defendant.  
4 The address was also consistent with the information held by law enforcement, the Meagan's Law website  
5 and previous convictions. Based on his training and experience, Detective Jones formed the opinion that  
6 defendant may be in possession of child pornography. He prepared and authored a search warrant for  
7 defendant's residence and vehicles. On August 7, 2007 at 11:15 a.m., Detective Jones personally presented  
8 the search warrant, including affidavit and attachment (ICE documents) to the Honorable John N. Anton.  
9 Judge Anton reviewed the search warrant and attachment, and signed it.

10 On August 8, 2007 at 9:45 a.m., Napa County Sheriff's Department Investigations detectives  
11 accompanied by ICE agents executed the search warrant at 3271 Beard Road. Approximately 30 items of  
12 evidence were seized, including child pornography, evidence of trading in child pornography,  
13 conversations with children on the internet, child-sized plastic blow-up doll, girl's panties, marijuana  
14 paraphernalia and indicia.

### 25 III. ARGUMENT

26 If the teachings of the Court's cases are to be followed and the  
27 constitutional policy served, affidavits for search warrants . . . must be  
28 tested and interpreted by magistrates and courts in a common-sense and  
29 realistic fashion. They are normally drafted by non-lawyers in the midst  
30 and haste of a criminal investigation. Technical requirements of elaborate  
31 specificity once exacted under common law pleadings have no proper  
32 place in this area. A grudging or negative attitude by reviewing courts  
33 toward warrants will tend to discourage police officers from submitting  
34 their evidence to a judicial officer before acting.

35 This is not to say that probable cause can be made out by affidavits  
which are purely conclusory, stating only the affiant's or an informer's

belief that probable cause exists without detailing any of the “underlying circumstances” upon which that belief is based. [Citation.] Recital of some of the underlying circumstances in the affidavit is essential if the magistrate is to perform his detached function and not serve merely as a rubber stamp for the police. However, where these circumstances are detailed, where reason for crediting the source of the information is given, and when a magistrate has found probable cause, the courts should not invalidate the warrant by interpreting the affidavit in a hypertechnical, rather than a common sense, manner. Although in a particular case it may not be easy to determine when an affidavit demonstrates the existence of probable cause, the resolution of doubtful or marginal cases in this area should be largely determined by the preference to be accorded to warrants.

(*United States v. Ventresca* (1965 380 U.S. 102, 108-109 [85 S.Ct. 741, 746].) The United States Supreme Court in *Illinois v. Gates* (1983) further stated:

Similarly, we have repeatedly said that after-the-fact scrutiny by courts of the sufficiency of an affidavit should not take the form of *de novo* review. A magistrate’s “determination of probable cause should be paid great deference by reviewing courts.” [Citation.] “A grudging or negative attitude by reviewing courts toward warrants,” [Citation], is inconsistent with the Fourth Amendment’s strong preference for searches conducted pursuant to a warrant . . . .”

The task of the issuing magistrate is simply to make a practical, commonsense decision whether, given all the circumstances set forth in the affidavit before him, including the “veracity” and “basis of knowledge” of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. And the duty of the reviewing court is simply to ensure that the magistrate had a “substantial basis for . . . conclud[ing]” that probable cause existed. [Citation.]

(*Illinois v. Gates* (1983) 462 U.S. 213, 236, 238-239 [103 S.Ct. 2317, 2331, 2332].)

#### **A. Defendant Must Establish Standing To Raise A Fourth Amendment Violation.**

The Proponent of a motion to suppress evidence has the burden of establishing that the challenged search or seizure violated his or her own Fourth Amendment rights. (*Rawlings v. Kentucky* (1980) 448 U.S. 98, 105; *Rakas v. Illinois* (1978) 439 U.S. 128, 143; *People v. Moreno* (1992) 2

1 Cal.App.4th 577.) "The demonstration of a legitimate expectation of privacy 'is a threshold standing  
2 requirement, and analysis cannot proceed further without its establishment.'" (United States v.  
3  
4 Singleton (9th Cir. 1993) 987 F.2d 1444,1449, citing United States v. Cruz Jimenez (1st Cir. 1990) 894  
5 F.2d 1, 5.)

6  
7 The People may challenge the defendant's standing even if their theory of the case is based on  
8 evidence that the defendant's standing has a possessory interest in the seized item. As the Court noted in  
9  
10 United States v. Salvucci (1980) 448 U.S. 83, 87, a "prosecutor may simultaneously maintain that the  
11 defendant criminally possessed the seized good, but was not subject to a Fourth Amendment deprivation,  
12 without legal contradiction." (*Id.* at p. 100) In Singleton, *supra*, the defendant was charged with  
13 possession of cocaine that was found in a separate unit in back of his father's home. At the suppression  
14 hearing, the district court found standing based upon the government's theory that because the defendant  
15 lived in the back house, he had possession of the drugs. On appeal, the court held that the defendant's  
16 standing to contest a search could not be based solely on the theory advanced by the government. The  
17 court held that a defendant cannot "rely on estoppel to discharge his allotted burden of proof, nor may a  
18 court overlook a defendant's failure to carry that burden." (United States v. Singleton, *supra*, 987, F.2d  
19 at p. 1449.)

20  
21 The United States Supreme Court has held that the government may challenge a defendant's  
22 standing to object to the search of his girlfriend's purse, despite its contention that the defendant owned  
23 drugs found in the purse. (Rawlings v. Kentucky, *supra*, 448 U.S. at p. 104-106.) Similarly, in United  
24  
25 States v. Irizarry (1st Cir. 1982) 678 F.2d 554, 556, the court permitted the government to challenge a  
26 defendant's standing to object to the search of an apartment belonging to another while maintaining that  
27 the checks found in the apartment belonged to the defendant.

28  
29 In this case, Defendant must show that a privacy right exists.  
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35

1  
2 **B. Standard of Review**  
3

4 The standard under which search warrants are to reviewed for adequate probable cause was set  
5 out by the United States Supreme Court in *Illinois v. Gates* (1983) 462 U.S. 213 [103 S.Ct. 2317] as  
6 follows:  
7

8  
9 [W]e conclude that it is wiser to abandon the “two-prong” test  
10 established by our decisions in *Aguilar* and *Spinelli*. In its place we affirm  
11 the totality-of-the-circumstances analysis that traditionally has informed  
12 probable-cause determinations. [Citations.] The task of the issuing  
13 magistrate is simply to make a practical, common-sense decision whether,  
14 given all the circumstances set forth in the affidavit before him, including  
15 the “veracity” and “basis for knowledge” of persons supplying the hearsay  
16 information, there is a **fair probability** that contraband or evidence of a  
17 crime will be found in a particular place. And the duty of the reviewing  
18 court is simply to ensure that the magistrate had a “substantial basis for . . .  
19 conclud[ing]” that probable cause existed. [Citation.]

20 (*Illinois v. Gates* (1983) 462 U.S. 213, 238-239 [103 S.Ct. 2317, 2332], emphasis added.) “Fair  
21 probability” is a lesser standard than the “substantially probable” standard that had been articulated by  
22 the California Supreme Court in *People v. Cook* (1978) 22 Cal.3d 67, 84, fn. 6.) The *Gates* case and the  
23 totality of the circumstances standard are applicable in California. (See *People v. Spears* (1991) 228  
24 Cal.App.3d 1, 19.)  
25

26  
27 Both the magistrate and reviewing courts are to interpret an affidavit for a search warrant in a  
28 common sense and realistic fashion. (*Illinois v. Gates* (1983) 462 U.S. 213, 238; *United States v.*  
29 *Ventresca* (1965) 380 U.S. 102, 108.) The issuing magistrate’s task was to make a practical and  
30 common-sense decision whether, given all the information contained in the affidavit, “there is a fair  
31 probability that contraband or evidence of a crime will be found in a particular place.” (*Illinois v. Gates*,  
32 supra at p. 238)  
33  
34  
35



1 A court reviewing issuance of the warrant does not determine probable cause de novo. Its task is  
2 simply to insure the magistrate had a substantial basis for concluding that probable cause existed.  
3  
4 (Massachusetts v. Upton (1984) 466 U.S. 727, 733; Illinois v. Gates, supra, 462 U.S. at p. 238.) The  
5 reviewing court must pay great deference to the magistrate's decision. (Illinois v. Gates, supra; People  
6 v. Glenos (1992) 7 Cal.App.4th 1201, 1206.) And, doubtful or marginal cases should be resolved by a  
7 preference for the warrant. (Ventresca, supra, 380 U.S. at p. 108; People v. Superior Court (Corona)  
8 (1981) 30 Cal.3d 193, 203.) "A grudging or negative attitude by reviewing courts toward warrants will  
9 tend to discourage police officers from submitting their evidence to a judicial officer before acting."  
10 (Ventresca, supra.) The duty of the reviewing court is to save the warrant if it can do so in good  
11 conscience. (Caligari v. Superior Court (1979) 98 Cal.App.3d 725, 729.)  
12  
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17

### 18 C. Defendant's Motion To Quash Must Be Denied.

#### 19 1. Sufficient Evidence Was Present In The Affidavit To Establish Probable Cause.

20  
21 Probable cause to issue a search warrant is a fluid concept depending on the totality of the  
22 circumstances. The issuing magistrate must "make a practical, commonsense decision whether, given  
23 all the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of  
24 knowledge' of persons supplying hearsay information, there is a fair probability that contraband or  
25 evidence of a crime will be found in a particular place." (Illinois v. Gates (1983) 462 U.S. 213, 232,  
26 238; People v. Camarella (1991) 54 Cal.3d 592, 600-601.)  
27  
28  
29

30 Additionally, the issuing magistrate may rely upon relevant opinions and conclusions drawn by an  
31 experienced affiant-officer on the issue of probable cause. (People v. Sandlin (1991) 230 Cal.App.3d  
32 1310, 1315; People v. Cleland (1990) 225 Cal.App.3d 388, 393; People v. Johnson (1971) 21  
33  
34  
35

1 Cal.App.3d 235, 243, 245.) “ ‘The rule should not be understood as placing the ordinary man of  
2 ordinary care and prudence and the officer experienced in the detection of narcotics offenders in the  
3 same class. Circumstances and conduct which would not excite the suspicion of the man on the street  
4 might be highly significant to an officer who had had extensive training and experience in the devious  
5 and cunning devices used by narcotics offenders to conceal their crimes.’ [Citations.]” (People v.  
6 Superior Court (Kiefer) (1970) 3 Cal.3d 807, 827; see also People v. Rich (1977) 72 Cal.App.3d 115,  
7 121.)

8 “Matters which may be taken into account include the past criminal record of the suspected person  
9 and his association with known narcotics users [Citations], and the fact that a person was to be in  
10 possession of a narcotic shortly after he left the premises of the suspected person. [Citation.]” (People v.  
11 Perez (1961) 189 Cal.App.2d 526, 533.) In People v. Thomas (1980) 112 Cal.App.3d 980, part of the  
12 probable cause used by the officers in acquiring their search warrant was that during their surveillance of  
13 defendant’s apartment, “they saw various people make brief, five- to ten-minute visits to the apartment;  
14 however, due to the inclement weather the officers were unable to get good descriptions of most of these  
15 visitors.” (People v. Thomas (1980) 112 Cal.App.3d 980, 984.) Furthermore, “officers maintaining the  
16 surveillance observed a blue 1967 Volkswagen drive up in front of the apartment; two men left the car,  
17 entered the apartment, and returned about five minutes later. A check of the car’s license number  
18 revealed an outstanding felony warrant—possession of heroin—for the registered owner . . . .” (Id. at p.  
19 984.)

20 “Frequent brief visits to residence by numerous persons is an indication of narcotics traffic.  
21 [Citations.] Some innocent explanation for these comings and goings may be imagined. But, [t]he  
22 possibility of an innocent explanation does not deprive the officer of the capacity to entertain a  
23 reasonable suspicion of criminal conduct.’ [Citation.]” (People v. Kershaw (147 Cal.App.3d 750, 759-  
24

1 760.) “It is fundamental that an officer’s observations can give rise to probable cause [for a search] . . .  
2 if that officer had sufficient training and experience from which to draw the conclusions necessary to  
3 create a reasonable belief in the presence of contraband.’ [Citation.]” (People v. Kershaw, 147  
4 Cal.App.3d 750, 760.)

5  
6  
7 The recent case of People v. Mikesell (1996) 46 Cal.App.4<sup>th</sup> 1711 is illustrative. In Mikesell, an  
8 informant witnessed heavy car traffic to and from the defendant’s home. The visitor’s stayed at the home  
9 for only 15 to 20 minutes. The informant had been told by friends that drugs were being sold at the  
10 home, and that one could buy just about anything. Approximately three weeks later, officers conducted a  
11 surveillance of the home, and saw numerous cars pull into the driveway. During a 70-minute period,  
12 eight cars pulled in and out of the driveway. All but one of the visitors stayed for just a few minutes.  
13 This was the only recent information provided. (Mikesell, *supra*, at p. 1715.) Older information was  
14 included in the warrant about extensive narcotics involvement of defendant as old as four years and up to  
15 six months prior to the current information. (Id. at pp. 1714-1715.)

16  
17  
18 The Mikesell court also had the following observation regarding corroboration:  
19  
20

21  
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23  
24 Defendants also assert that Deputy Hagwood’s observation of  
25 heavy car traffic to and from their home did not adequately corroborate the  
26 informant’s information in the Rives warrant because the traffic could be  
27 the result of wholly innocent activity. However, defendants have misstated  
28 the relevant standard for corroborating information. “For corroboration to  
29 be incriminating it is not necessary that the activities the police observe  
30 point unequivocally toward guilt. It is sufficient that those activities give  
31 rise to a reasonable inference or strong suspicion of guilt.” [Citations.]

32  
33 We conclude that a review of the totality of the circumstances  
34 presented by the Rives and Gamberg warrants leads to this conclusion: a  
35 fair probability existed that evidence of an ongoing drug sales operation  
would be found at the Mikesell’s home. Our conclusion is strengthened  
when we apply the rule that doubtful or marginal cases are to be resolved  
with a preference for upholding a search under a warrant. (People v. Mesa,  
*supra*, 14 Cal.3d at p. 470.)

1  
2  
3 Defendant first takes aim at the sources of information gathered by Detective Jones. The primary  
4 source is law enforcement officers from ICE, a division of the Department of Homeland Security. ICE  
5 agents told Detective Jones that Tim Craig in Napa, California received at least one image of child  
6 pornography from Lee Sly. Police officers and other law-enforcement officers are considered credible  
7 by virtue of their occupation. People v. Hill (1974) 12 Cal..3d 731, 761. The affiant need only state  
8 that the person from whom he received information is a police officer in order to satisfy the requirement  
9 of reliability. For example, in People v. Paris (1975) 48 Cal.App.3d 766, a statement given to the affiant  
10 by a police officer regarding his off-duty observation of kilos of marijuana was considered credible. In  
11 his affidavit, Detective Jones plainly identifies special agents from ICE as the source of his information.  
12 In addition, he went the additional step of providing the documents utilized by ICE in the form of an  
13 attachment to the search warrant.  
14  
15

16  
17 The secondary source of information is America Online who identified defendant while  
18 complying with a federal search warrant. Because of AOL's obligation to comply with federal law (42  
19 U.S.C. Section 13032) and mandated compliance with a federal search warrant, there is a presumption of  
20 reliability akin to that afforded a citizen informant. In State v. Woolridge (Fla. Ct. App., 2d Dist. 2007) -  
21 -- So.2d ---, 2007 WL 548805, the court held that AOL was "acting in a manner analogous that that of a  
22 citizen informant when it forwarded the information to NCMEC", making the tip's reliability thereby  
23 presumed and there is no need for corroboration. That is certainly true in the present case. Therefore, the  
24 identifying information supplied by America Online in the instant case should be considered reliable and  
25 accurate. And it is most informative that everything revealed to law enforcement, including the  
26 defendant's name, address, phone number and screen name, was accurate.  
27  
28  
29

30  
31 Defendant alleges that the affidavit submitted by Detective Jones is "based exclusively on  
32 conclusionary statements" and there is "no evidence whatsoever". This argument fails for two primary  
33 reasons. First, the affidavit included an attachment with the ICE reports, federal search warrant and  
34  
35

1 America Online records. Although the Napa County Clerk's Office misplaced this document, this was  
2 still part of the affidavit and reviewed by Judge Anton. The attachment clearly demonstrates that  
3 America Online identified the defendant as a person who was possessing child pornography. Second,  
4 the affidavit alone sufficiently identified the defendant as a person who was possessing child  
5 pornography. Pursuant to federal search warrant, America Online identified 125 individuals trading in  
6 child pornography with Lee Sly. Lee Sly sent child pornography in "Message #223" to Tim Craig,  
7 defendant, with the corresponding residence and phone number. Thus, defendant possessed child  
8 pornography. The defendant's identifying information was checked by Special Agent Denmore through  
9 Pacific Gas & Electric and double checked by Detective Jones through his Department of Justice sex  
10 registration records. Defendant's assertion that there is "no evidence whatsoever" and "without a shred  
11 of supporting evidence" connecting to Tim Craig to "Limosdude" rings hollow. It states in the affidavit  
12 that America Online search warrant results indicated the following: "'Limosdude" – Tim Craig , 3271  
13 Beard Rd., Napa, CA, 94558, (707) 257-1282.

## 22 2. The Information Was Not Stale

23 It has been held that the information presented to a magistrate supporting probable cause to issue a  
24 search warrant must consist of "facts so closely related to the time of the issuance of the warrant as to  
25 justify a finding of probable cause at that time. Whether the proof meets this test must be determined by  
26 the circumstances of each case." (Sgro v. United States (1932) 287 U.S. 206, 210-211)

27 There is no bright line between fresh and stale information. A marijuana buy 15 days earlier was held  
28 fresh enough to support a search warrant in People v. Wilson (1968) 268 Cal.App.2d 581, 588-589. And  
29 the passage of 18 days between the time marijuana was seen at the search location and the time the  
30 search warrant did not make the information stale in People v. Scott (1968) 259 Cal.App.2d 268, 277.



1 The finding of probable cause was supported by the suggestion in the affidavit that the drug activity  
2 described had been conducted as a "regular business." (Ibid.)  
3

4 In People v. Thompson (1979) 89 Cal.App.3d 425, the court of appeal upheld the magistrate's  
5 conclusion that it was probable that contraband would be on the premises described even though there  
6 had been a lapse of from 10 to 16 days between the officer's receipt of information upon which the  
7 affidavit was based and the application for the warrant. Again, the evidence indicated that the defendant  
8 was engaged in a "continuing and ongoing activity." (Id. at pp. 429-430; see also Brown v. Superior  
9 Court (1973) 34 Cal.App.3d 539, 544 [nine days not too old]; People v. Wilson (1986) 182 Cal.App.3d  
10 742, 754-755 [information of ongoing enterprise 40 days old was not stale]; People v. Hulland (2003)  
11 110 Cal.App.4th 1646, 1652-1653 [52-day-old information was stale].)  
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16 In this case, law enforcement officers discovered that defendant traded child pornography in January  
17 or February, 2007. In March, 2007 ICE served America Online with federal search warrants. In July,  
18 2007, verification of defendant's location was made by ICE. The search warrant in this case was signed  
19 and served in August, 2007. The time of delay, at most, would be seven months. The affidavit in this  
20 case provides ample reason to believe the items sought were still in defendant's residence. Defendant, a  
21 registered sex offender and trader of illicit images was likely to have contraband in his possession based  
22 upon good reasons and common sense. Collectors of child pornography rarely if ever dispose of  
23 sexually explicit materials because they value the material so highly. The long-term nature of the crime  
24 provides good reason to believe the computerized visual depictions downloaded by defendant would be  
25 present in his residence when the search was conducted months later. It is also unreasonable to believe  
26 that defendant, a collector and pedophile, would destroy it or give it away. Thus, the information  
27 provided in the affidavit was not stale.  
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**D. Defendant Fails To Make An Adequate Preliminary Showing To Support Any Traversal Motion.**

In the leading case of Franks v. Delaware (1978) 438 U.S. 154, the Court held a defendant has a limited Fourth Amendment right to challenge the validity of a search warrant by controverting the factual allegations made in the supporting affidavit. A defendant is entitled to an evidentiary hearing on the affidavit's veracity only after making a substantial preliminary showing that (1) the affidavit includes a false statement made "knowingly and intentionally, or with reckless disregard for the truth," and (2) "the allegedly false statement is necessary to the finding of probable cause." (Id. at pp. 155-156; People v. Hobbs (1994) 7 Cal.4th 948, 974; People v. Luttenberger (1990) 50 Cal.3d 1, 9-11.)

Because there is a presumption of validity in favor of the affidavit supporting a search warrant, a challenger's attack,

[M]ust be more than conclusory and must be supported by more than a mere desire to cross examine. There must be allegations of deliberate falsehood or of reckless disregard for the truth, and those allegations must be accompanied by an offer of proof. They should point out specifically the portion of the warrant affidavit that is claimed to be false; and they should be accompanied by a statement of supporting reasons. Affidavits or sworn or otherwise reliable statements of witnesses should be furnished, or their absence satisfactorily explained. Allegations of negligence or innocent mistake are insufficient.

(Franks v. Delaware, *supra*, 438 U.S. at p. 171.)

In addition to this substantial preliminary showing that a false statement knowingly and intentionally, or recklessly was included in the affidavit, a defendant must also show that when this misstatement is set to one side, the remaining content of the affidavit is insufficient to support a finding of probable cause. (Id. at pp. 171-172.) Only then is the defense entitled to an evidentiary hearing. If sufficient

1 unchallenged information remains to support a finding of probable cause, the motion to traverse must be  
2 denied without a hearing.

3  
4 A conclusory and uncorroborated defense declaration, which simply denies the acts alleged in the  
5 affidavit, or which appears to be unreliable because it is contradicted by established facts, is wholly  
6 insufficient to require a hearing. (People v. Box (1993) 14 Cal.App.4th 177, 184-186; People v. Sandlin  
7 (1991) 230 Cal.App.3d 1310, 1318.) Even a tape recorded statement of a witness disavowing  
8 information attributed to him in the search warrant affidavit has been held insufficient because it was  
9 unsworn. (People v. Box, *supra*, at pp. 183-184.) “In short, the message delivered by the highest  
10 judicial authority is plain. . . . With specific reference to facially sufficient warrants issued by neutral  
11 magistrates, it is a rare day indeed when they can be successfully challenged. One who ventures upon  
12 that effort better have his facts and figures, and they should be compelling. A fishing expedition will not  
13 be entertained.” (People v. Wilson (1986) 182 Cal.App.3d 742, 750.)

14  
15 At this time, the defendant has failed to make a substantial preliminary showing that the affidavit  
16 includes a false statement made knowingly and intentionally, or with reckless disregard for the truth, and  
17 that the allegedly false statement is necessary to the finding of probable cause. Therefore, the court  
18 should deny his motion to traverse if raised at this hearing.

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27 **E. Evidence Will Not Be Excluded If Law Enforcement Acted On The Warrant In Good faith.**

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29 Assuming, *arguendo*, that the court finds the search warrant affidavit contains insufficient  
30 probable cause, the People contend that, under *United States v. Leon* (1984) 468 U.S. 897 [82 L.Ed.2d  
31 677, 104 S.Ct. 3405] (*Leon*), the “good faith” exception to the exclusionary rule should apply because of  
32 the officer’s “objectively reasonable” good faith reliance upon the search warrant.  
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1 In *Leon*, the United States Supreme Court declared that the Fourth Amendment does not require  
2 suppression of evidence "obtained by officers acting in reasonable reliance on a search warrant issued by  
3 a detached and neutral magistrate but ultimately found to be unsupported by probable cause." (*United*  
4 *States v. Leon* (1984) 468 U.S. 897, 900 [104 S.Ct. 3405, 3409]; see also *Massachusetts v. Shepard*  
5 (1984) 468 U.S. 981, 987-988 [104 S.Ct. 3424, 3427]; *People v. Ruiz* (1990) 217 Cal.App.3d 574, 580-  
6 581; *People v. Alvarez* (1989) 209 Cal.App.3d 660, 665.) "[T]he essential prerequisite to the reasonable  
7 good faith exception [I]s a finding that the officers had a good faith objectively reasonable belief that the  
8 search they conducted was authorized by a valid warrant [and] . . . that the officers properly executed the  
9 warrant and searched only those places and for those objects that it was reasonable to believe were  
10 covered by the warrant." (*People v. Fortune* (1988) 197 Cal.App.3d 941, 950, italics, citation and  
11 internal quotation marks omitted; see also *People v. Alvarez, supra*, at p. 665; *People v. MacAvoy* (1984)  
12 162 Cal.App.3d 746, 764.)

13 Suppression remains a remedy if the magistrate in issuing a warrant was: (1) misled by  
14 information in an affidavit that the affiant knew was false or would have known was false except for his  
15 reckless disregard of the truth; (2) where the issuing magistrate wholly abandoned his judicial role; (3) if  
16 a warrant was based on the officer's manifest objective good faith in relying on a warrant based on an  
17 affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely  
18 unreasonable; and (4) if the warrant itself is so facially deficient that the executing officers cannot  
19 reasonably presume it to be valid. (*United States v. Leon, supra*, at p. 923 [104 S.Ct. at p. 3421]; *People*  
20 *v. Camarella* (1991) 54 Cal.3d 592, 596.)

21 "In most cases, the fact that a warrant was issued by a neutral and detached magistrate will  
22 suffice to establish that the officer has acted in good faith in conducting the search' [Citation.] *Leon*  
23 applies an objective standard which 'requires officers to have a reasonable knowledge of what the law  
24 prohibits.' [Citation.] 'Where the affidavit is sufficient to create disagreement among thoughtful and  
25 competent judges, the officer's reliance on the magistrate's determination of probable cause should be  
26 deemed objectively reasonable.' [Citation.]" (*People v. McDaniels* (1994) 21 Cal.App.4<sup>th</sup> 1560, 1566.)  
27 But: "If a well-trained officer should reasonably have *known* that the affidavit failed to establish  
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1 probable cause and hence that the officer should not have sought a warrant), exclusion is required under  
2 the third situation described in *Leon*, and a court may not rely on the fact that a warrant was issued in  
3 assessing objective reasonableness of the officer's conduct in seeking the warrant." (*People v.*  
4 *Camarella, supra*, 54 Cal.3d at p. 596.) "A police officer may shift all of the responsibility for the  
5 protection of an accused's Fourth Amendment rights to the magistrate by executing a warrant no matter  
6 how deficient it may be in describing the places to be searched and the items to be seized. An officer  
7 applying for a warrant is required to exercise reasonable professional judgment." (*People v. Bradford*  
8 (1997) 15 Cal.4<sup>th</sup> 1229, 1292.)

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11 A perfect example of the good faith doctrine is found in the California Supreme Court decision  
12 of *People v. Camarella* (1991) 54 Cal.3d 592. In *Camarella*, police officers received a call from an  
13 anonymous informant who said she used to purchase her cocaine from the defendant. While she no  
14 longer used cocaine, a relative of hers did and was currently buying from the defendant. The caller stated  
15 defendant's place of business and his approximate residence. (*Id.* at p. 597.)

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18 The officer who applied for the warrant then checked his records and discovered that about nine  
19 months earlier, a CI had spoken to the officer and stated that the CI had recently purchased cocaine from  
20 Camarella. A records check showed that about three years earlier, Camarella had been arrested for  
21 possession of cocaine with "pay/owe" sheets recording probable drug sales in his possession. (*People v.*  
22 *Camarella, supra*, 54 Cal.3d at p. 598.) The only additional investigation taken prior to serving the  
23 warrant was to verify Camarella's address. There was no recent observation of heavy traffic to and from  
24 Camarella's residence. The *Camarella* court concluded that "a well-trained officer reasonably could  
25 have believed that the affidavit presented a close or debatable question on the issue of probable cause.  
26 [Citations.] Thus it cannot be said that Detective Addoms should have *known* that his affidavit failed to  
27 establish probable cause (and hence that he should not have sought a warrant)." (*People v. Camarella,*  
28 *supra*, 54 Cal.3d at p. 606.)

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32 The *Camarella* court also commented on the defendant's assertions that more investigation could  
33 have occurred:  
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1 It is true, as the majority in the Court of Appeal noted below, that a  
 2 reasonable officer might have undertaken additional investigation to  
 3 augment the affidavit before submitting it to the magistrate. The question  
 4 under *Leon, supra*, 468 U.S. 879, however, is not whether further  
 5 investigation would have been reasonable, but whether a reasonable  
 6 officer in Addom's position would have *known* that the affidavit, as it  
 7 existed at the time it was to be presented to the magistrate, was legally  
 8 insufficient without additional and more recent corroboration.

9 (*People v. Camarella* (1991) 54 Cal.3d 592, 606.)

10  
 11 In general, a search conducted pursuant to a search warrant is presumed lawful. Thus, the burden of  
 12 establishing the invalidity of the search warrant rests upon the defendant. (*Theodor v. Superior Court*  
 13 (1972) 8 Cal.3d 77, 101.) Further, evidence seized by an officer during a search in objectively  
 14 reasonable reliance on the validity of a search warrant will not be excluded even if the warrant is later  
 15 determined to have been issued without probable cause. (*United States v. Leon* (1984) 468 U.S. 897,  
 16 922; *People v. Lopez* (1985) 173 Cal.App.3d 125, 139-142; *People v. MacAvoy* (1984) 162 Cal.App.3d  
 17 746, 759-765.) The People have the burden of proving objectively reasonable reliance to support  
 18 application of the good faith exception to the exclusionary rule. (*People v. Willis* (2002) 28 Cal.4th 22.)  
 19  
 20 The very fact the officer is acting on a warrant issued by a neutral and detached magistrate normally  
 21 suffices to establish that the officer is acting in good faith. (*Leon, supra*; *United States v. Ross* (1982)  
 22 456 U.S. 798, 823, fn. 32.) The test then becomes "whether a reasonable and well-trained officer 'would  
 23 have known that his affidavit failed to establish probable cause and that he should not have applied for  
 24 the warrant.' " (*People v. Camarella* (1991) 54 Cal.3d 592, 605-606, italics original.)

25  
 26 In this case, the affiant received information from law enforcement officers at the Department of  
 27 Homeland Security, Immigration and Customs Enforcement, and results of a federal search warrant. He  
 28 also conducted his own investigation, making key observations at defendant's residence and a noting a  
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1 criminal history of sexual deviancy. The affiant, an experienced child pornography investigator, had  
2 previous success presenting similar search warrants on a state and federal level. The affiant prepared a  
3 Search Warrant Affidavit detailing the probable cause for requesting the search warrant. The Honorable  
4 Judge John N. Anton, a neutral and detached magistrate, reviewed the affidavit in its entirety and found  
5 probable cause to issue the search warrant. The affiant and other law enforcement officers acted on the  
6 warrant and conducted a search of the defendant's residence and found the contraband they expected to  
7 find. Given that the agents objectively and reasonably relied on the warrant issued by the magistrate, the  
8 evidence should not be excluded. It would be highly unfair to attribute to the affiant that he **knew** the  
9 affidavit was legally insufficient at the time he presented it to the magistrate. I believe a sound legal case  
10 has been made that the affidavit provides sufficient probable cause, therefore, by definition, the good  
11 faith exception under *Leon* has been complied with. Defendant's motion to quash the search warrant  
12 should be denied.  
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#### 21 IV. CONCLUSION

22  
23 Based on the foregoing, the People respectfully urge the court to deny defendant's motion to suppress  
24 evidence and quash or traverse the search warrant.  
25  
26

27 Dated: January 16, 2008

Respectfully submitted,

28  
29  
30 GARY LIEBERSTEIN  
Napa County District Attorney

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32 By: 

33 Paul Gero  
34 Deputy District Attorney  
35

PROOF OF SERVICE

I declare that I am employed in the County of Napa, State of California; that I am over the age of eighteen years; that I am not a party to this action; and that my business address is 931 Parkway Mall, Napa, California 94559.

On January 16, 2008, I served a copy of the attached People's Opposition To Defendant's Motion to Suppress Evidence & Quash or Traverse Search Warrant in the attached case, on defense counsel:

Ronald Abernathy  
Chief Deputy Public Defender

RECEIVED  
JAN 16 2008  
NAPA CO.  
PUBLIC DEFENDER

as follows:

- ☐ FAX NUMBER – I served the above-described document in the above-numbered action by sending a true and correct copy by a facsimile machine to the name and telephone number indicated above, and that said transmission was reported as complete and without error;
- ☐ PERSONAL DELIVERY – I personally served the above-described document in the above-numbered action by leaving it with the receptionist for the attorney's office named above;
- ☐ U.S. MAIL – I served the above-described document in the above-numbered action by placing a true and correct copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the U.S. Mail, addressed as indicated above;
- ☒ SUBSTITUTION SERVICE – I served the above-described document in the above-numbered action by placing a true and correct copy thereof in the District Attorney pickup basket/folder and/or the Court file for interoffice pickup.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: 1/16/08

D. Warren  
D. WARREN

# EXHIBIT I

**California Crimes Requiring Sex Registration Under the Sex Offender Registration Act, Cal. Penal Code § 290**  
**As of October 2007**

<b>California Penal Code §</b>	<b>Definition</b>
207	Kidnapping committed with intent to violate sections 261, 286, 288, 288a, or 289.
207(b)	Kidnapping, victim under 14 with the intent to violate any 288 sections.
209	Kidnapping for ransom committed with intent to violate sections 261, 286, 288, 288a, or 289.
209(b)(1)	Kidnapping for ransom committed with intent to violate sections 261, 286, 288, 288a, or 289.
220	Assault to commit rape, sodomy, or oral copulation or to violate sections 264.1, 288 or 289.
220/261	Assault to commit rape.
220/261(2)	Assault to commit rape by force or fear.
220/664.1	Assault to rape in concert with force/violence.
243.4	Sexual battery.
243.4(a)	Sexual battery.
243.4(b)	Sexual battery on medically institutionalized person.
243.4(c)	Sexual battery victim unaware-fraudulent misrepresentation.
243.4(d)	Sexual battery involving restrained person.
243.4(e)(1)	Touch person intimately against will for sexual arousal/etc.
261	Rape: not specified.
261(1)	Rape: victim incapable of consent.
261(2)	(Prior Code) Rape by force or fear.
261(2)/264.1	Rape in concert by force.
261(3)	Rape of drugged victim.
261(4)	Rape: victim unconscious of the nature of the act.
261(6)	Rape by threat of retaliation.
261(a)(1)	Rape: Victim incapable of giving consent.
261(a)(2)	Rape by force/fear etc.
261(a)(3)	Rape of drugged victim.
261(a)(4)	(Prior Code) Rape: Victim unconscious of the nature of the act.
261(a)(4)(A)	Rape: Victim was unconscious or asleep.
261(a)(4)(B)	Rape: Victim was unconscious and not aware of the act.



California Penal Code §	Definition
261(a)(4)(C)	Rape: Victim not aware due to perpetrators fraud.
261(a)(4)(D)	Rape: Victim not aware - fraudulent misrepresentation.
261(a)(6)	Rape by threat of retaliation.
261.2	(Prior Code) Rape by force or fear.-
261.2/261.3	(Prior Code) Rape by force or threat.
261.3	(Prior Code) Rape by force or victim intoxicated.
261.4	(Prior Code) Rape by threat or rape of drugged victim.
262(a)(1)	Rape Spouse by force or fear.
264.1	Rape/etc. in concert with force/violence.
266	Entice minor female for prostitution/etc.
266c	Induce intercourse/sex acts by false representation with intent to create fear.
266h(b)	Pimping: Prostitute under 16 years of age.
266i(b)	Pandering: Pandering Prostitute under 16 years of age.
266j	Procurement of person under 16 for lewd and lascivious acts.
267	Abduct minor for prostitution.
269	Aggravated sexual assault/child under 14 or 10 years.
269(a)	Aggravated sexual assault child under 14 and 10 years younger.
269(a)(1)	Aggravated sexual assault child under 14 to violate 261(a)(2).
269(a)(2)	Aggravated sexual assault child under 14 to violate 264.1.
269(a)(3)	Aggravated sexual assault child under 14 to violate 286 by force or fear.
269(a)(4)	Aggravated sexual assault child under 14 to violate 288a by force or fear.
269(a)(5)	Aggravated sexual assault child under 14 to violate 289(a) by force or fear.
272	Contribute to the delinquency of a minor (lewd or lascivious).
285	Incest.
286	Sodomy.
286(a)	Sodomy; General Category.
286(b)(1)	Sodomy with person under 18 years.
286(b)(2)	Sodomy with person under 16 years.
286(c)	(Prior Code) Sodomy with person under 14 years or with force.
286(c)(1)	Sodomy with person under 14 years.
286(c)(2)	Sodomy with force or violence.
286(c)(3)	Sodomy with threat of retaliation.

California Penal Code §	Definition
286(d)	Sodomy in concert with force.
286(e)	Sodomy while confined in prison or jail.
286(f)	Sodomy: victim unconscious of the nature of the act.
286(g)	Sodomy: victim incapable of giving consent.
286(h)	Sodomy: Without consent victim and defendant in mental facility.
286(i)	Sodomy without consent: Victim intoxicated.
286(j)	Sodomy without consent: believe person is spouse.
286(k)	Sodomy by threat of authority to arrest/deport.
288	Crimes against children; lewd or lascivious.
288(a)	Lewd or lascivious acts with child under <u>14</u> years.
288(b)	(Prior Code) Lewd or lascivious acts with a child under <u>14</u> years with force.
288(b)(1)	Lewd or lascivious acts with child under <u>14</u> years with force.
288(b)(2)	Caretaker commits sexual act on dependent adult with force.
288(c)	(Prior Code) Lewd or lascivious acts with child <u>14</u> or <u>15</u> years old.
288(c)(1)	Lewd or lascivious acts with child <u>14</u> or <u>15</u> years old.
288(c)(2)	Caretaker commits lewd or lascivious acts on dependent adult.
288a	Oral copulation.
288a(a)	Oral copulation.
288a(b)(1)	Oral copulation with person under <u>18</u> years.
288a(b)(2)	Oral copulation with person under <u>16</u> years.
288a(c)	(Prior Code) Oral copulation with person under <u>14</u> or by force.
288a(c)(1)	Oral copulation with person under <u>14</u> .
288a(c)(2)	Oral copulation with force or violence.
288a(c)(3)	Oral copulation threat of retaliation.
288a(d)	Oral copulation in concert with force or fear.
288a(d)(1)	(Prior Code) Oral copulation in concert with force or fear.
288a(d)(2)	(Prior Code) Oral copulation in concert by threat of retaliation.
288a(d)(3)	(Prior Code) Oral copulation in concert: victim incapable of consent.
288a(e)	Oral copulation while confined in prison or jail.
288a(f)	Oral copulation: Victim unconscious of the nature of the act.
288a(f)(1)	Oral copulation: Victim was unconscious or asleep.
288a(f)(2)	Oral copulation: Victim was unconscious and not aware of act.

California Penal Code §	Definition
288a(f)(3)	Oral copulation: Victim not aware due to perpetrator's fraud.
288a(f)(4)	Oral copulation: Victim not aware - fraudulent misrepresentation.
288a(g)	Oral copulation: Victim incapable of giving consent.
288a(h)	Oral copulation: Victim and defendant in state hospital.
288a(i)	Oral copulation: Victim intoxicated.
288a(f)	Oral copulation: Believe person is a spouse.
288a(k)	Oral copulation by threat of authority to arrest or deport.
288.2	Harmful matter - special circumstance ( <i>felony only</i> ).
288.2(a)	Harmful Matter: Seduction of minor via phone
288.2(b)	Harmful Matter: Seduction of minor via mail/internet.
288.3	Communication with Minor with intent to commit sexual act
288.5	(Prior Code) Continuous sexual abuse of a child.
288.5(a)	Continuous sexual abuse of child.
288.7	Sexual Intercourse or sodomy with Child 10 years or younger
289	(Prior Code): Sexual penetration with foreign object.
289(a)	(Prior Code) Sexual penetration by foreign object.
289(a)(1)	Sexual penetration by foreign object with force.
289(a)(2)	Sexual penetration by foreign object with threat of retaliation.
289(b)	Sexual penetration with foreign object. Victim incapable of consent.
289(c)	Sexual penetration with foreign object. No consent: Victim and defendant in state hospital.
289(d)	Sexual penetration: Foreign object. Victim unaware of act.
289(d)(1)	Sexual penetration: Foreign object. Victim unconscious or asleep.
289(d)(2)	Sexual penetration: Foreign object. Victim unaware.
289(d)(3)	Sexual penetration: Foreign object. Victim unaware of perpetrator's fraud.
289(d)(4)	Sexual penetration: Victim not aware - fraudulent misrepresentation.
289(e)	Sexual penetration with foreign object. Victim drugged.
289(f)	Sexual penetration with foreign object. Victim believes it is spouse.
289(g)	Sexual penetration with foreign object: Authority threat arrest.
289(h)	Sexual penetration with foreign object: Victim under 18.
289(i)	Sexual penetration with foreign object: Victim under 16.
289(j)	Sexual penetration with foreign object: Victim under 14.

California Penal Code §	Definition
311.1	(Prior Code) Indecent exposure.
311.1(a)	Send/sell etc. obscene matter depicting minor.
311.1	(Prior Code) Advertise obscene matter depicting minor.
311.10(a)	Advertise obscene matter depicting minor.
311.11	(Prior Code) Possess obscene matter, child under 14 years.
311.11(a)	Possess obscene matter of minor in sexual act.
311.11(b)	Possess obscene matter of minor in sexual act with a prior conviction.
311.2(b)	Distribute obscene material depicting minor for commercial consideration.
311.2(c)	Distribute obscene material depicting minor (misdemeanor).
311.2(d)	Distribute obscene matter of minor to minor.
311.3	(Prior Code) Sexual exploitation of a child.
311.3(a)	Depict sexual conduct of minor.
311.3(b)	Sexual exploitation depicting minor in sex act.
311.3(b)(1)	Sexual exploitation: sexual intercourse.
311.3(b)(2)	Sexual exploitation: penetration by foreign object.
311.3(b)(3)	Sexual exploitation: masturbation.
311.3(b)(4)	Sexual exploitation: sadomasochistic abuse.
311.3(b)(5)	Sexual exploitation: exhibition of genitals.
311.3(b)(6)	Sexual exploitation: defecation/urination for viewer stimulation.
311.3(d)	Prior conviction: punishment.
311.4	(Prior Code) Employment or use of minor to perform prohibited acts.
311.4(a)	Employment or use of minor to perform prohibited acts.
311.4(b)	Employment or use of minor to perform prohibited acts for commercial purposes.
311.4(c)	Employment or use of minor for obscene matter.
314.1	Indecent exposure.
314.2	Assist act of indecent exposure.
646.9	Stalking (felony) pursuant to 290 (a)(2)(E) only.
647a	(Prior Code) Annoy or molest children.
647a(1)	(Prior Code) Annoy or Molest Children.
647.6	Annoy or molest child under 18.
647.6(a)	Annoy or molest Children
647.6(b)	Annoy or molest children/illegal entry

California Penal Code §	Definition
647.6(c)(1)	Annoy or molest children with prior
647.6(c)(2)	Annoy or molest children specific prior conviction
653f(c)	Soliciting commission of 264.1, 288, or 289 by force or violence.